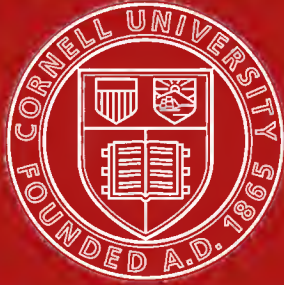


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In the Privy Council

ON APPEAL FROM THE CHIEF COURT OF LOWER BURMA.

BETWEEN

MAUNG THA HNYIN APPELLANT

AND

I. MA MYA SU AND MAUNG TUN WIN, Minor by his
Guardian Ma Mya Su, legal representatives of
Maung Tun Hla, deceased. (2) MA LUT TAW.
(3) MA U. (4) MAUNG PO MYA. (5) MA HLA
THA. (6) MAUNG ON MAUNG. (7) MA THEIN
ME. (8) MA SA BE. (9) MA SATHA PU. (10)
ISMAIL. (11) KHATIZA BI RESPONDENTS.

DATE OF JUDGMENT OF THE

CHIEF COURT OF LOWER BURMA ... 23rd April 1907.

DATE OF APPLICATION FOR LEAVE TO

APPEAL TO HIS MAJESTY IN COUNCIL 17th June 1907.

Rangoon :

PRINTED AT THE HANTHAWADDY PRESS.

1909.

IN THE DISTRICT COURT OF AMHERST.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN VERSUS MAUNG TUN HLA AND 7 OTHERS.

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Record of
The District Court of Amherst.

Civil Regular No. 64 of 1903.

DIARY.

No 1.
Diary.

In the District Court of Amherst.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN PLAINTIFF.

VERSUS

MAUNG TUN HLA AND OTHERS DEFENDANTS.

10 12th May 1903.—Plaint received. Issue summons to defendant for written statement and settlement of issues, allowing two months' time as 1st defendant must be served through the International Court at Zimme for 17th July. Written statement for 16th.

G. F. ARNOLD,
District Judge.

17th June 1903.—Vide proceedings. For 23rd July.

D. O. SULLIVAN,
for Judge.

20 23rd July 1903.—Vide proceedings. Issue notice to 1st defendant that the suit is adjourned to 28th September.

D. O. SULLIVAN.

Also issue notice to Ma Byu regarding her appointment as guardian to 6th, 7th and 8th defendants for 7th August and notice on Mr. Barretto's application to have certain parties added as defendants for 7th August.

D. O. SULLIVAN,
for Judge.

7th August 1903.—Vide order. Issue summons to the two defendants now added for 19th August.

D. O. SULLIVAN.

19th August 1903.—Vide order. Issue fresh summons on 9th defendant for 2nd September.

D. O. SULLIVAN.

2nd September 1903.—Summons on 9th defendant affixed to house. Advocate for plaintiff alone present. Issue fresh summons for 14th September. 10

D. O. SULLIVAN,
for Judge (ill).

14th September 1903.—Read petition of 9th defendant. Let him be furnished with a copy of the plaint.

For written statement on 28th September.

D. O. SULLIVAN,
for Judge (ill).

28th September 1903 —Vide orders for issues on 30th September. 20

D. O. SULLIVAN.

30th September 1903.—Issues framed for evidence on 28th January 1904.

D. O. SULLIVAN.

28th January 1904.—Vide order for 24th May 1904.

H. E. McCOLL,
Judge.

31st March 1904.—Application for issue of a commission to examine a witness on interrogatories filed. Issue notices to the defendants to file cross interrogatories on 21st April. 30

H. E. McCOLL,
Judge.

21st April 1904.—Mr. Abdul Guffoor and Mr. Barretto have no objections to the interrogatories and no cross-interrogatories to file. The commission will now issue, (the mortgage bond to accompany to commission registered).

H. E. McCOLL.

21st April 1904.—Owing to a Sessions case being fixed for the 24th May this case is adjourned to the 7th September. Issue notice free of cost.

D. O. SULLIVAN.

10

7th September 1904.—Maung Chit Hlaing for plaintiff. Mr. Abdul Guffoor for 1st, 2nd, 3rd defendants. Mr. Barretto for 9th defendant. No other defendants present. Four witnesses for the plaintiff examined. Adjourned *sine die* pending the return of the commission.

H. E. McCOLL.

4th October 1904.—The commission has been returned unexecuted. Maung Chit Hlaing for plaintiff applies for a fresh commission. Issue, returnable on 30th January 1905.

20

H. E. McCOLL.

30th January 1905.—One witness examined—for further evidence on 6th April.

D. O. SULLIVAN.

6th April 1905.—Case called. Parties' advocates present. Ninth defendant Abdul Guffoor has since died. The widow is taking out letters of administration which case is fixed for the 1st May.

30

Notice will issue on the legal representatives *viz.*—the widow Ma Satha Pu and her children Mahomed Ismail and Katiza Bi. As the children are minors Ma Satha Pu will be appointed guardian *ad litem* for them. Fixed for hearing on the 11th May.

N. S. FIELD,

Judge.

11th May 1905.—Case called. Mr. Barretto for Ma Satha Pu accepts the written statement filed by her husband. No witnesses present. Fixed for hearing on the 19th September.

N. S. FIELD,
Judge.

19th September 1905.—Case called. Second defendant and six witnesses present. Second defendant and four witnesses examined the others are dispensed with by the parties. For arguments 26th September.

N. S. FIELD, 10
Judge.

26th September 1905.—Parties advocates file written arguments. Orders reserved.

N. S. FIELD,
Judge.

3rd October 1905.—Orders passed.

N. S. FIELD,
Judge.

IN THE COURT OF THE DISTRICT JUDGE, AMHERST.

No. 1.
Plaint.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN, residing at Moulmein PLAINTIFF.

VERSUS

- | | | | |
|-----|--|--|--|
| 1. | MAUNG TUN HLA, residing at Chiengmai, Siam. | | |
| 2. | MA LUT HTAW | | |
| 3. | MA U | | |
| 4. | MAUNG PO MYA | | |
| 5. | MA HLA THA | | |
| 6. | MAUNG ON MAUNG | } Minors by their Guardian
ad litem Ma Byu. | } Residing at
Kadoe, Amherst
District. |
| 7. | MA THEIN MAY | | |
| 8. | MA SA BE | | |
| 9. | MA SATHA PU, widow of Abdul Guffoor, deceased. | | |
| 10. | ISMAIL | } Children of Abdul Guffoor, deceased. | |
| 11. | KHATIZA BI | | |
| | | by their Guardian Ma Satha Pu | DEFENDANTS. |

Suit to enforce a mortgage valued at Rs. 10,000.

Plaint.

The plaintiff above-named states as follows :—

1. By an Instrument of mortgage dated the 26th day of July 1890 the 1st defendant and Ko Auk Po, Ma Mut and Maung Auk Hta conveyed the land and premises described in the schedule hereto unto the firm of M. M. R. M. Venkatachellum Chetty for securing the sum of Rs. 11,000 and interest at the rate of 1 per cent. per mensem.

2. The said Ko Auk Po and Ma Mut were husband and wife : they are now dead, and their legal representatives are the second and third defendants, Ma Lut Hta and Ma U, their daughters, the fourth and fifth defendants Maung Po Mya and Ma Hla Tha, their grand daughters, and the sixth, seventh and eighth defendants Maung On Maung, Ma Thein May and Ma Sa Be their great grand-children.

3. The said Maung Auk Hta is also dead and his legal representative is the first defendant Maung Tun Hla, his son.

4. By an Instrument of Transfer dated the 8th day of November 1894 made between the said firm of M. M. R. M. Chetty of the one part, and Abdul Rymon of the other part, the said firm of M. M. R. M. Venkatachellum Chetty assigned to the said Abdul Rymon for valuable consideration the said principal sum of Rs. 11,000 and all interest then due and thenceforth to accrue due in respect thereof and all the right, title, interest, property claim and demand of the said firm of M. M. R. M. to, in and upon the said moneys and premises.

5. The plaintiff above-named obtained a decree against the said Abdul Rymon in Civil Regular No. 77 of 1901 of the District Court of Amherst and in execution of the said decree the abovementioned mortgage and the principal money and interest due thereunder were attached and put up for sale by auction and at such sale was sold to the plaintiff, and the right, title and interest of the mortgagee was transferred by endorsement upon the instrument of transfer. 10

6. Before the said attachment and sale a portion of the property comprised in the said mortgage being the lands and premises thirdly and fourthly described in the schedule hereto was sold by the said Abdul Rymon but the plaintiff is not aware how much was realized by the said sale and so far as the plaintiff is aware nothing else has been received in and towards satisfaction of the principal moneys and interest due under the said mortgage.

7. The plaintiff is unable to say how much remains due and owing under the said mortgage but for the purpose of the Court Fees Act estimates the value of the relief sought at Rs. 10,000 and is willing to pay any difference of the duty on this amount and on the amount which may be found due on an account being taken. 20

8. The first defendant is sued personally and as legal representative of the said Ko Auk Hta, deceased: the second, third, fourth, fifth, sixth, seventh and eighth defendants are sued as legal representatives of Ko Auk Po and Ma Mut, deceased.

The plaintiff prays :—

(1) That an account of the moneys now due and owing under the said instrument of mortgage for principal and interest may be taken. 30

(2) For an order that the first defendant personally and as such representative as aforesaid and the second, third, fourth, fifth, sixth, seventh and eighth defendants as such representatives as aforesaid do pay to the plaintiff such sums of money as may be found due for principal and interest under the said instrument of mortgage on the taking

of such account together with further interest in the amount of principal money so found to be due as aforesaid under the said instrument of mortgage at the rate of Re. 1 per cent. per mensem from the date of filing this suit till realisation or payment and the costs of this suit.

(3) For an order in default of payment of the said sum so found to be due for principal and interest on the taking of the accounts as aforesaid with further interest and costs within a time to be fixed by this Court the lands firstly and secondly specified in the schedule hereto may be sold and the proceeds of sale may be applied in and towards satisfaction of the plaintiff's claim herein.

(4) For such further or other relief as in the premises shall seem just.

(Sd.) CHIT HLAING,
Plaintiff's Advocate.

(Sd.) MAUNG THA HNYIN,
(in Burmese.)

Moulmein, 12th May 1903.

I, Maung Tha Hmyin the plaintiff above-named do declare that what is stated in this plaint is true to the best of my knowledge, information and belief.

(Sd.) MAUNG THA HNYIN,
(in Burmese.)

Document upon which plaintiff relies.

1. The said Instrument of Mortgage dated the 26th day of July 1890 filed herewith.

2. The said Instrument of Transfer dated the 8th day of November 1894 and the endorsement thereon filed herewith.

3. The record of proceedings in Civil Regular Suit No. 77 of 1901 of the District Court of Amherst.

The Schedule above referred to.

Firstly.—All that house and ground situated at Kado bounded on the North by a road, South by a road, East by Ko Kay's land, and West by Kado Creek now in the occupation of Ma Lut Taw.

Secondly.—A piece of garden land situated at Kaw Tun bounded on the North by a Creek, on the South by Ko Htaw's land and West by Nga Shwe Thi's land containing an area of 14.69 acres now in the occupation of M. Abdul Guffoor.

Thirdly.—A piece of garden land situated in Kado Circle covered by Potta Grant No. 6 of the year 1244 bounded on the North by Maung Mut's land, South by Maung Auk Ta's land, East by Ko Waing's land and West by a road now in the possession of Maung Shwe Hlay.

10

Fourthly.—A piece of garden land situated in Kado Circle covered by Potta Grant No. 5 of the year 1244 bounded on the North by Maung Tun Hla's land, South by Maung Hmo's land, East by Ko Waing's land, West by a road now in the possession of Maung Shwe Hlay.

Suit No. 64 of 1903.

MAUNG THA HNYIN PLAINTIFF.

No. 3.
Written statement
of 1st defendant.

VERSUS

MAUNG TUN HLA AND SEVEN OTHERS DEFENDANTS.

Written statement of 1st Defendant.**TRANSLATION.**

10 That on the 22nd June 1903, a summons was received from the British Consul at Zimme. That in connexion with this a (written) defence has once already been made. That nevertheless this second written statement is submitted:—

1. That it is true that, on 26th July 1890, a sum of Rs. 11,000 with interest at 1 per cent. was due to M. M. R. M. Venkatachellum Chetty of 4th Division, Maulmein, by Ko Auk Po, Ma Mut, Maung Auk Ta and the petitioner.

2. That on account of this sum of money—besides the petitioner himself—Ko Auk Po, Ma Mut and Maung Auk Ta, promised to pay the whole Rs. 11,000 up with interest in two instalments, and undertook to do so under a document. That the document was executed saying that the first instalment of Rs. 4,000 was to be paid on 26th January 1891, and the second instalment of Rs. 7,000 on 26th July 1891.

20 3. That on account of the above-mentioned Rs. 11,000 the petitioner, Ko Auk Po, Ma Mut and Maung Auk Ta placed in mortgage the following properties:—

(a) Wooden house roofed with brick-tiles and the land on which it stands belonging to Ko Auk Po and Ma Mut.

(b) Garden land measuring 14.69 acres, situate at Zwe-ya Kyun, Kaw Tun Circle, entered in the document as belonging to Ko Auk Po and Ma Mut.

(c) Garden land at Pedaw, Kado Circle, Grant No. 6 of 1244. This garden land is entered in the document as Maung Tun Hla's property.

30 (d) Garden land at Pedawshi, Kado Circle, Potta No. (5) of 1244. This is entered in the document as Maung Tun Hla's property.

4. That on the 8th November 1894 the petitioner heard that M. M. R. M. Venkatachellum Chetty had sold the documents and papers relating to the aforesaid properties to one Abdul Rahman of Kado on 26th July 1890 for Rs. 11,000.

5. That not long after the said Abdul Rahman had purchased the said documents from the Chetty (he) forcibly entered and took unlawful possession

of the garden situate in Zweyagyun, Kaw Tun Circle, mentioned in the document and assaulted and drove out the petitioner's brother-in-law Maung Pe and two servants.

6. That though the said Abdul Rahman had no title to the two gardens at Pedaw, Kado Circle, shewn as (၁) and (၂), he yet sold them unlawfully to one Maung Shwe Le of Kaw Hnat, and they are even now in Maung Shwe Le's possession.

7. That it is true that when the document was drawn up, the properties mentioned in the document referred to above, and the wooden house with a tiled roof situate in the land marked (၃), in Kado Village, were certainly Nga Auk Po and Ma Mut's property. That nevertheless after the lapse of about three years from the date of the execution of the document there was a fire at Kado, and the house was burnt down. That on this account the petitioner's mother, second defendant Ma Lut Taw, built a new house on the said land with her own money for her own occupation ; and she is occupying it now.

10

8. That, moreover, of the properties mortgaged under the aforementioned document the two gardens known as holdings 6 and 5 marked (၄) and (၅) situate in Medawgon, Me Kayat Kwin, Kado Circle were in the names of Ko Auk Ta and Ma Ka Dut in 1244. That it is not correct as mentioned in the document above referred to. That the said document is in English. That petitioner begs to mention for the information and consideration of the Court that as he does not understand English, and as he is living at a distance, he has been treated unjustly.

20

(Sd.) MAUNG TUN HLA,

28th September 1903.

Verification

IN THE COURT OF DISTRICT JUDGE, AMHERST.

No. 4.
Written statements
of 2nd and 3rd de-
fendants.

CIVIL REGULAR No. 64 of 1903.

MAUNG THA HNYIN PLAINTIFF.

VERSUS

1. MAUNG TUN HLA, residing at Chiengmai, Siam.

2. MA LUT HTAW

3. MA U

10 4. MAUNG PO MYA

5. MA HLA THA

6. MAUNG ON MAUNG

7. MA THEIN MAY

8. MA SA BE

Residing at Kadoe,
Amherst District.

DEFENDANTS.

Written statement of 2nd and 3rd defendants. 2nd and 3rd defendants state as follows :--

1. They personally do not know the making and execution of the mortgage Bond sued upon and they put plaintiff to the strict proof thereof.

20 2. That the 2nd defendant is the daughter of Ko Ouk Po by his wife Ma Mut (both deceased) and widow of Ko Auk Ta.

3. That the 3rd is the sister of 2nd defendant Ma Lut Htaw.

4. The ground being item No. 1 of the schedule attached to the plaint was the property of these defendants' parents. The house built by their parents was burnt down in the year 1897.

5. The 2nd defendant seeing the ground vacant and thinking that the same was free from encumbrances built the present house with funds belonging to her at a cost of Rs. 1,000.

30 6. The garden land forming item 2 of the said schedule was not the property of Ko Ouk Po and Ma Mut. It is the property of the defendant Maung Tun Hla and one Maung Maung. At the time the mortgage Bond was said to be executed the said Maung Maung was a minor. No one had the right to alienate his half share in the garden land.

7. The two garden lands forming items 3 and 4 in the said schedule are the joint property of the 2nd defendant and her deceased husband Ko Auk Ta. Her husband had no authority from her to mortgage her half share.

Mark + of MA LUT HTAW.

Mark + of MA U.

We the 2nd and 3rd defendants abovenamed do hereby declare that what is stated above is true to the best of my knowledge except as to the matters stated on information and belief and which I believe to be true.

Mark + of MA LUT HTAW.

Mark + of MA U.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 5.
Written statement
of the 9th defendant.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN ... PLAINTIFF.

VERSUS

MAUNG TUN HLA AND OTHERS DEFENDANTS.

Written statement of the ninth defendant M. Abdul Guffoor.

- 10 1. That this defendant admits paras 1 and 4 of the plaint.
2. That after the mortgaged debt had been assigned to Abdul Rahman under the deed mentioned in para 4 of the plaint the mortgagors in the deed mentioned in the first para of the plaint not being able to redeem the property mortgaged for the debt made over the same to the assignee of the mortgagee this defendant with possession of the premises.
3. That one Eman Saib and the said Abdul Rahman as such owner mortgaged amongst other property, the property set out as items Nos. 1 and 2 in the Schedule annexed to the plaint with this defendant under a registered deed, dated 14th March 1895.
- 20 4. That as such mortgagee this defendant filed a suit being Civil Regular No. 118 of 1902 against the said Eman Saib and Abdul Rahman for payment of the mortgage debt and in default for foreclosure of the said mortgage.
5. That on the 21st July 1902 a decree was passed in this defendant's favour for payment of the mortgage debt and for foreclosure in default of payment of the decretal amount within six months from the said date.
6. That the defendants in the said suit Civil Regular No. 118 of 1902 made default in payment of the decretal amount and this defendant as the judgment creditor in the said suit became the absolute owner with possession.
- 30 7. That this defendant denies the said Abdul Rahman had any title or interest in the property named in item Nos. 1 and 2 of the Schedule annexed to the plaint at the time of sale when plaintiff became the purchaser of the monies and securities held under the mortgage Bond and Deed of Assignment, dated 26th July 1890 and 8th November 1894 respectively.

Wherefore this defendant prays that the suit may be dismissed with costs.

CHAS. BARRETTO,

Advocate for 9th defendant.

M. ABDUL GUFFOOR,

9th defendant.

Moulmein, 28th September 1903.

I, M. Abdul Guffoor do declare that what is stated in the above is true to the best of my knowledge except as to matters stated on information and belief which I believe to be true.

M. ABDUL GUFFOOR,

9th defendant. 10

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 6.
Mg. Tha Hnyins
petition that Ma
Byu may be appoint-
ed guardian *ad litem*
of Mg. On Maung,
Ma Thein Me and
Ma Sa Be.

APPLICATION ARISING OUT OF CIVIL REGULAR NO. 64 OF 1903.

MAUNG THA HNYIN, residing at 5th Division,
Moulmein PETITIONER.

VERSUS

MA BYU, residing at Kadoe RESPONDENT.

The petition of the abovenamed.

10 SHEWETH,

1. That on July 17th 1903 this Honourable Court was pleased to order that your petitioner must apply to this Honourable Court to have some person appointed *ad litem* as guardian of (1) Maung On Maung, (2) Ma Thein May, (3) Ma Sa Be who are minors.

2. That the said Maung On Maung, Ma Thein May and Ma Sa Be are sued by your petitioner as legal representatives of Maung Ouk Po and Ma Mut, deceased, amongst others in Civil Regular No. 64 of 1903 of this Court.

3. That the said Maung On Maung, Ma Thein May and Ma Sa Be had been duly served with summonses.

20 4. That the respondent Ma Byu mother of the said minors being the natural guardian is the person best fitted to be appointed the guardian of the said minors.

Wherefore your petitioner prays that the respondent may be appointed the guardian of the said minors *ad litem*.

And shall ever pray.

CHIT HLAING,

Petitioner's Advocate.

Moulmein, July 20th 1903.

MAUNG THA HNYIN,

(in Burmese)

Petitioner.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 7.
Petition of E. Abdul
Rahman to have
himself and 5 others
added as defendants.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN PLAINTIFF.

VERSUS

MAUNG TUN HLA AND OTHERS DEFENDANTS.

The humble petition of E. Abdul Rahman
of Kadoe.

RESPECTFULLY SHEWETH :—

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1. That the plaintiff as purchaser of the instrument of mortgage, dated 26th July 1890, and the subsequent assignment deed, dated 8th November 1894, in favour of petitioner instituted the above suit on the said mortgage deed for the payment of the sum of Rs. 10,000 (estimated for the purposes of the Court Fees Act) and for sale of the property mortgaged for the said debt.

2. That under the provisions of Section 32, Civil Procedure Code, your petitioner prays that the following persons namely :—

1. E. Abdul Rahman, petitioner.
2. M. Abdul Guffoor of 4th division, Moulmein.
3. Ma Oh of Kadoe.
4. Maung Shwe Lok Gyi of Phai Taw, Kadoe.
5. Maung Tha Aye, a criminal prisoner in the Moulmein Jail.
6. Maung Shwe Hlay of Kadoe

20

may be added as defendants to the suit for the following reasons :—

i. That after the assignment of the mortgage deed to petitioner by the M. M. R. M. Chetty firm, the mortgage was satisfied by the mortgagors making over all the mortgaged property to petitioner.

ii. That after such satisfaction your petitioner mortgaged the property shown as item No. 2 in the schedule to the plaint to one

30

M. Abdul Guffoor who filed a suit against petitioner and obtained a decree for foreclosure and is now the owner of the property.

- iii. That the property specified in item Nos. 3 and 4 of the said schedule were sold by petitioner to one Ma Oh.
- iv. That the said Ma Oh sold the same to Shwe Loke Gyi who transferred the said property to one Maung Tha Aye who conveyed the same to Maung Shwe Hlay who is now the owner.

And shall ever pray.

10 CHAS. BARRETTO,

Petitioner's Advocate.

23rd July 1903.

E. ABDUL RAHMAN,

(in native characters)

Petitioner.

IN THE DISTRICT COURT OF AMHERST.

No. 8.
Judge's order adding
Abdul Guffoor
and Mg. Shwe Hle
as defendants.

CIVIL REGULAR No. 64 OF 1903.

MAUNG THA HNYIN.

VERSUS

MAUNG TUN HLA AND OTHERS.

BEFORE H. E. McCOLL, Esq., Judge of the Court.

ORDER.

By consent Abdul Guffoor and Maung Shwe Hle are added as defendants.
Issue summonses with copies of plaint to them for 19th August.

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H. E. McCOLL.

7th August 1903.

IN THE DISTRICT COURT OF AMHERST.

CIVIL REGULAR NO. 64 OF 1903.

MAUNG THA HNYIN.

VERSUS

MAUNG TUN HLA AND OTHERS.

BEFORE H. E. McCOLL, Esq., Judge of the Court.

ORDER.

10 Though Ma Byu is the mother of the sixth, seventh and eighth defendants,
her husband is dead. I cannot find any authority for holding that the expres-
sion " married woman " in Section 457, Civil Procedure Code, includes a widow.

Ma Byu does not show cause against the application. She is accordingly
appointed guardian *ad litem* to the sixth, seventh and eighth defendants.

Issue a summons and copy of the plaint to her.

H. E. McCOLL,

Judge.

7th August 1903.

No. 9.
Judge's order ap-
pointing Ma Byu
guardian *ad litem* to
6, 7 and 8 defen-
dants.

IN THE DISTRICT COURT OF AMHERST.

No. 10.
Judge's order
striking off tenth de-
fendant Mg. Shwe
Le.

CIVIL REGULAR NO. 64 OF 1903.

MAUNG THA HNYIN.

VERSUS

MAUNG TUN HLA AND OTHERS.

BEFORE H. E. McCOLL, Esq., Judge of the Court.

ORDER.

PRESENT.

Maung Chit Hlaing for plaintiff. Mr. Abdul Guffoor for second and third defendants. Ma Byu guardian of sixth, seventh and eighth defendants not present though served. 10

Maung Shwe Thwin for tenth defendant says that as no relief is claimed against the property in the possession of the tenth defendant he is not a necessary party to the suit, unless the plaint be amended. Maung Chit Hlaing says he has no objection to the tenth defendant being struck off and says that he in fact at first objected to his being added.

The tenth defendant is struck off without costs. Issue fresh summons to the ninth defendant as he has not been served for 2nd September.

H. E. McCOLL, 20

Judge.

19th September 1903.

Issues.

No. 11.
Issues

1. Was the original mortgage duly executed by Maung Tun Hla, Maung Auk Po, Maung Auk Ta and Ma Mut ?

2. Was the mortgaged property made over to Abdul Rahman in satisfaction of the debt ?

3. Did Abdul Rahman mortgage items Nos. 1 and 2 (in the schedule) to ninth defendant Abdul Guffoor ?

4. Did this property by virtue of the decree in Civil Regular No. 118 of 1902 of this Court become the absolute property of ninth defendant ?

10 5. What rights, if any, did the plaintiff acquire by his purchase of the bond ?

6. Is the house built on the land (item No. 1) by Ma Hlut Taw, since the mortgage, subject to the mortgage lien ?

7. To what relief is the plaintiff entitled ?

W. CARR,

District Judge.

30th September 1903.

8. Did the firm M. M. R. M. assign the mortgage bond to Abdul Rahman ?

H. E. McCOLL,

Judge.

28th January 1904.

MAUNG CHIT HLAING FOR PLAINTIFF. MR. BARRETTO FOR
NINTH DEFENDANT.

No. 12.
Judge's order holding that plaintiff must prove the execution of the mortgage and the assignment to Abdul Rahman and postponing case to 24th July 1904.

Mr. Abdul Guffoor for the remaining defendants.

No witnesses for the plaintiff present. The burden of proof in the first instance lies on plaintiff. He must prove the execution of the mortgage bond. The only witness who can prove this is Eman Saib who is said to be ill.

The case is therefore postponed and the plaintiff is warned that he must also prove the assignment to Abdul Rahman.

Postponed till 24th May 1904.

H. E. McCOLL, 10

Judge.

28th January 1904.

DEPOSITION OF MA MUN TAW, FIRST WITNESS FOR PLAINTIFF.

Age	....	....	....	....	60
Religion	....	....	....	....	Buddhist.
Race	....	....	....	....	Talaing.
Father's name	....	....	....	....	Maung La.
Occupation	....	....	....	....	No employ.
Residence	....	....	....	....	Kadoe.

No. 13.
Deposition of Ma
Mun Taw.

Sworn.

10 I know the plaintiff Maung Tha Hnyin. I know the second defendant Ma Lut Taw, wife of Maung Auk Ta. I know their son Maung Tun Hla, first defendant. About a year ago I went with Ma Lut Taw to Maung Tha Hnyin's house, because I wanted to buy a garden belonging to Ma Lut Taw. I went to ask Maung Tha Hnyin's advice as to whether I should buy it or not. I did not buy the garden. I was afraid to. It was Ma Lut Taw who proposed the sale. She told me that the title deeds of the garden were in Maung Tha Hnyin's possession and that he was going to sell them so she asked me to buy them.

CROSS-EXAMINED BY MR. ABDUL GUFFOOR.

20 I did not buy that garden nor any other garden. I only wished to buy that garden, not any other. I did not buy it because matters were complicated. Ma Lut Taw told me the garden was mortgaged to plaintiff. She did not say who had mortgaged it. The title deeds were with Maung Tha Hnyin. I saw a bundle of papers but did not examine them. I do not know what was the amount of debt, nor whether it was due by Ma Lut Taw or her husband. The price for the garden had not been agreed upon.

CROSS-EXAMINED BY MR. BARTHOLOMEW.

30 I do not know in whose possession the garden was. Eman Saib and his people were said by Ma Lut Taw to be enjoying the garden. I did not ask what the area was or how much revenue was paid on it. I never even went to it. I wanted to buy it because Ma Lut Taw led me to and said that it was an old garden of hers. I wished to buy the garden for myself, not for her. After my return from Maung Tha Hnyin's house a number of people told me that if I bought it there would be complications so I did not. They did not tell me who was working it.

Read over and acknowledged.

H. E. McCOLL,

Judge.

7th September 1904.

DEPOSITION OF MA MIN KALE, SECOND WITNESS FOR PLAINTIFF.

No. 14.
Deposition of Ma
Min Kale.

Age	....	....	....	....	59
Religion	....	....	....	....	Buddhist.
Race	....	....	....	....	Talaing.
Father's name	....	....	....	....	Unknown.
Occupation	...	....	....	....	No employ.
Residence	....	....	....	....	Kadoe.

Sworn.

I know Ma Lut Taw and also Maung Tha Hnyin. I once went with Ma Lut Taw to Maung Tha Hnyin's house. It was about ten years ago I think. I do not know why we went. Ma Lut Taw went on business of her own. She said she had business but I do not know what it was about. 10

CROSS-EXAMINED BY MR. ABDUL GUFFOOR.

Maung Tha Hnyin's son married my daughter. I often visit him.

No cross-examination by Mr. Barretto.

Read over and acknowledged.

H. E. McCOLL,

Judge.

7th September 1904.

DEPOSITION OF MAUNG THA E, THIRD WITNESS FOR PLAINTIFF.

Age	....	....	....	....	40.
Religion	....	....	....	....	Buddhist.
Race	....	....	....	....	Talaing.
Father's name	....	....	....	....	Maung Tu.
Occupation	....	....	....	....	Cultivator.
Residence	....	....	....	....	Kadoe.

No. 15.
Deposition of Mg.
Tha E.

Sworn.

10 I used to be thugyi of Kadoe from 1892 till 1903. I know Abdul Rahman, son of Eman Saib. I also know Ma Lut Taw. Ma Lut Taw came and reported to me eight years ago that Eman Saib had purchased two gardens and a house from a Chetty with whom she had mortgaged them and that she did not consent to the purchase. I told her to go to Court, if she did not consent. She said that she had no money then but would wait until her son Maung Tun Hla came from Chiengmai. About three years ago Maung Tun Hla came back from Chiengmai. I went with him to Eman Saib and Maung Tun Hla offered to buy the gardens and house back for Rs. 6,000. Eman Saib wanted Rs. 8,000. So they did not come to terms. That is all I know.

CROSS-EXAMINED BY MR. ABDUL GUFFOOR.

20 Ma Lut Taw reported that Eman Saib was about to purchase the property, not that he had purchased it and she wanted me to prevent the sale. After this Eman Saib came and reported the sale and asked me to make a mutation of names and to enter his son Abdul Rahman as the purchaser. I did this. I never assessed the property in his name because before the assessment rolls were prepared he had sold the property. He sold the house and ground for Rs. 1,050 to Maung Shwe E and the orange garden for Rs. 200 to Ma O. I purchased this garden for Rs. 60 only because it had been neglected. I sold it to Maung Shwe Hle for Rs. 150. The garden was assessed in Ma O's name for two years. It was assessed in my name for three years and it has now been assessed in Maung Shwe Hle's name for five years.

30 It was after this garden had been sold to Maung Shwe Hle that Maung Tun Hla went and offered to buy the property back for Rs. 6,000. The other garden, the betelnut garden was not sold. It is still in Abdul Rahman's possession. It is situated on Sweza island. Eman Saib said that he would get back the house and ground and orange garden if Maung Tun Hla would pay Rs. 8,000 for the whole property. I owe Maung Tha Hnyin Rs. 10,000 on a mortgage of all my property.

CROSS-EXAMINED BY MR. BARRETTO.

40 Exhibits 1a, 1b, 1c, 1d, 1e, 1f, and 1g, are in my hand writing. The garden is not within my circle but I wrote those tax receipts as the thugyi Maung Shwe Byaw had no taiksaye and did not know how to write them up properly. It was Maung Ne who worked the garden when I visited it two years ago. He said that he had rented it from Eman Saib.

RE-EXAMINED.

It was about ten years ago that the house and ground were sold to Maung Shwe E. The house and ground are now in Ma Lut Taw's possession. Maung Shwe E tried to evict her. She refused. He sued her but it was held that the Chetty had not been the owner and that the sale was invalid and so Maung Shwe E lost his case. The Rs. 10,000 which I owe to plaintiff is money borrowed. I have mortgaged property to the value of Rs. 10,000. I alone borrowed this money.

Read over and acknowledged.

H. E. McCOLL,

10

Judge.

7th September 1904.

RE-CALLED.

The discrepancies in the area of the betel garden are due to the holding really consisting of two holdings of which one measuring 14 acres was in the name of Ma Lut Taw's son Maung Tun Hla and the other measuring 11 acres was in the name of her other son Nyo Maung.

Read over and acknowledged.

H. E. McCOLL,

Judge.

20

7th September 1904.

DEPOSITION OF ABDUL RAHMAN, FOURTH WITNESS FOR PLAINTIFF.

Age	....	....	....	.... 32.
Religion	....	....	....	.... Mahomedan.
Race	....	....	....	.... Zerbadi.
Father's name	....	....	....	.... Eman Saib.
Occupation	....	....	....	.... No employ.
Residence	....	....	....	.... Kadoe.

No. 16.
Deposition of
Abdul Rahman.

Solemnly affirmed.

10 I bought some title deeds from a Chetty to whom they had been mortgaged. I do not remember the Chetty's name nor the date. It was about 8 or 10 years ago. I purchased the title deeds by the registered deed of sale Exhibit A which was signed by the Chetty and also by me. Maung Auk Po, Maung Auk Ta, Ma Lut Taw told me that they had mortgaged some gardens and a house to this Chetty. They all three told me so.

CROSS-EXAMINED BY MR. ABDUL GUFFOOR.

20 It was before I purchased the title deeds that they told me this. I do not remember whether I saw Ma Lut Taw's signature on the mortgage bond or not. I do not know whether Maung Auk Ta and Maung Auk Po were dead when I purchased the title deeds or not. Before I purchased them I asked Ma Lut Taw whether she had mortgaged the property to the Chetty and she said that it was true and that she was unable to redeem it and so I could purchase it if I liked. I do not remember asking anyone else. My father Emam Saib was present when Ma Lut Taw said this. The Chetty, my father and I and Ma Lut Taw and three or four of the other mortgagors whose names I do not know went with us to the thugyi to have a mutation of names made. I remember well that Ma Lut Taw went with us. We signed the "pyat-baing." I do not remember how many of us signed. I know Maung Tun Hla's brother Maung Maung. He was young then. I do not know whether he went with us or not. I know the house in which Ma Lut Taw is living. She built it after the fire in 1894. I do not know who supplied the money.

CROSS-EXAMINED BY MR. BARRETTO.

40 The 9th defendant sued me and my father for Rs. 6,000. I had mortgaged these gardens and house for that amount. Emam Saib and I confessed judgment and a mortgage decree against the property and against us was passed, six months being allowed for redemption. We have not paid the money and Abdul Guffoor, 9th defendant, became the owner of the property. I think I received a "pyat-baing" from the thugyi. I think I gave it to the 9th defendant when I mortgaged the property. When I sold the orange garden and house, they did not sign the deed of sale as being consenting parties. They knew of the sale and made no opposition.

RE-EXAMINED.

Of the seven properties shown in the mortgage bond which I executed in favour of Abdul Guffoor, I cannot say how many are now in his possession. After executing that mortgage bond, I mortgaged two houses in Moulmein, comprised in that bond, to a Chetty. The Chetty obtained a decree against me and I have not satisfied it. The Chetty prayed for a mortgage decree. I did not put in an appearance. A decree was passed and two houses sold in execution of it. I mortgaged no more of the seven properties. In 1901 the plaintiff filed a suit against me, Mahomed Adam and Emam Saib and obtained a mortgage decree. The title deeds of the gardens and house which I had bought for over Rs. 5,000 from the Chetty were put up for sale in execution of that decree and sold. I cannot say whether Maung Tha Hnyin's decree was prior to or later than Abdul Guffoor's.

10

Read over and acknowledged.

H. E. McCOLL,

Judge.

7th September 1904.

DEPOSITION OF ARNACHELLUM CHETTY.

SOLEMNLY AFFIRMED.

No. 17.
Deposition of
Arnachellum Chetty.

I previously had a business of my own under the style of S. N. N. I am now an agent for the firm V. N. N. A. R.

10 I know M. M. R. M. Venkatachellum Chetty. He is now living somewhere near Rangoon. I do not recollect the names Maung Auk Po and Ma Mut but I know Maung Auk Ta and Maung Tun Hla. I signed the bond Exhibit B as a witness. I saw the four persons whose names appear on the document as executants execute the bond. At that time they were known to me. I knew them personally. At that time I was living in Venkatachellum Chetty's house and they often used to come there.

No cross-examination.

Read over and acknowledged.

H. E. McCOLL,

Judge.

30th January 1905.

DEPOSITION OF SECOND DEFENDANT.

The witness having been duly sworn, says—

No. 18.
Deposition of Ma
Lut Taw, 2nd de-
fendant.

My name is Ma Lut Taw. My age is 62. I now reside at Kadoe. I am by occupation a timber trader. My father's name is Maung Auk Po.

The house on the land described in first paragraph of the schedule attached to the plaint was built by me. The original house built by my father Maung Auk Po was burnt in the fire that occurred about ten years. My father had then been dead for a long time.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

I know nothing about the old house having been mortgaged. I had always lived on the land and when the old house got burnt I built the new house without asking leave from any one. Maung Shwe E sued to get me evicted (Civil Regular No. 69 of 1895). The suit was dismissed. I have continued to live on the land ever since. I had Rs. 100 or Rs. 200 and my son-in-law Maung Be gave me the balance. The house cost me Rs. 900 or Rs. 1,000. Neither Abdul Rahman nor Abdul Guffoor tried to evict me from the house nor did any one. No one ever claimed rent.

10

Read over and acknowledged correct.

N. S. FIELD,

Judge.

20

19th September 1905.

DEPOSITION OF No. 1 WITNESS FOR THE 1ST, 2ND AND 3RD
DEFENDANTS.

No. 19.
Deposition of Mg.
Be.

The witness having been duly sworn, says—

My name is Maung Be. My age is 37. I now reside at Kadoe. I am by occupation a timber trader. My father's name is Maung Kan Ok.

10 I am 2nd defendant's son-in-law. I heard some of the statements she made while giving evidence. I am living with her. The fire at Kadoe took place about ten years ago. The house we now occupied was built after the fire and after Maung Auk Po's death. I gave Rs. 817 to Ma Lut Taw to build the house. I do not know whether she spent any money besides this on it. I gave her the money as a present.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

I noted this Rs. 817 in my account book. I have lived in the house since it was built except I have been to the jungle. With the exception of the case brought by Maung Shwe E no one has ever disputed our right to occupy the house nor has any one ever claimed rent.

Read over and acknowledged correct.

N. S. FIELD,

Judge.

19th September 1905.

DEPOSITION OF WITNESS, No. 2.

FOR THE 1ST, 2ND AND 3RD DEFENDANTS.

No. 20.
Deposition of Mg.
Shwe Paung.

The witness having been duly sworn, says—

My name is Shwe Paung. My age is 46. I now reside at 2nd division. I am by occupation a carpenter. My father's name is Maung Lu Gale.

I know the house 2nd defendant occupies. I was engaged by the 2nd defendant to build the same. It must have cost about Rs. 700 or Rs. 800. Her son Maung Maung purchased the timber. Ma Lut Taw paid me my hire, which was about Rs. 40 or Rs. 60.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

10

With whose money Maung Maung purchased the timber I cannot say. Second defendant had no husband at the time.

Read over and acknowledged correct.

N. S. FIELD,

Judge.

19th September 1905.

DEPOSITION OF WITNESS, No. 3.

FOR THE 1ST, 2ND AND 3RD DEFENDANTS.

The witness having been duly sworn, says—

No. 21.
Deposition of Mg.
Kin.

My name is Maung Kin. My age is 73. I now reside at Kadoe. I am by occupation a timber trader. My father's name is Maung Kyu.

10 The house occupied by 2nd defendant was built by her more than six years ago. Her husband was not alive at the time. It was built after the fire. When a new house is built it is the custom for an elder to enter it and ask to whom it belongs. I was the elder selected to do this in respect of the present house. I asked 2nd defendant and she told me that it was her house. I then in accordance with the Talaing custom gave her leave to live in it.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

Witness Maung Shwe Paung was the carpenter.

Read over and acknowledged correct.

N. S. FIELD,

Judge.

19th September 1905.

DEPOSITION OF WITNESS, No. I.

FOR THE 1ST, 2ND, 3RD 9TH, 10TH AND 11TH DEFENDANTS.

No. 22
Deposition of Mg.
Shwe Byaw.

The witness having been duly sworn, says—

My name is Maung Shwe Byaw. My age is 66. I now reside at 3rd division. I am by occupation a pensioned Circle Thugyi. My father's name is U Shwe Ngon.

The property described secondly in the schedule attached to the plaint was in my jurisdiction. I retired on pension last year. The tax receipt Exhibit 1*h* bears my signature. Exhibit 1*a* to 1*g* also bears my signature. The land originally belonged to Maung Auk Po and Auk Ta. They mortgaged it to a Chetty. The land then stood in the name of Auk Po. When mortgaged it was put in the Chetty's name and from the Chetty's name it was changed to that of Abdul Rahman. It was standing in the latter's name when I retired. I went and demanded the revenue from Maung Auk Po and Ma Lut Taw and they said that it was not for them to pay the revenue. I didn't ask them as to the ownership of the land. This was when the land had been standing in the name of Abdul Rahman for about eight years. Before this Ma Lut Taw had been paying the taxes. While the land stood in the Chetty's name Auk Po and Ma Lut Taw paid the revenue. They never paid revenue when it was changed to Abdul Rahman's name. They did not give any reason for refusing to pay revenue when the name had been changed to Abdul Rahman.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

Abdul Rahman's father Eman Saib came and showed me the original mortgage deed executed in favour of the Chetty and told me that "they" had bought the land and at his request I entered the land in the name of Abdul Rahman. From then up till 1903-1904 when I retired. Abdul Rahman paid the revenue.

Read over and acknowledged correct.

N. S. FIELD,

Judge. 30

19th September 1905.

DEPOSITION OF WITNESS, No. 2.

FOR THE 1ST, 2ND, 3RD AND 9TH, 10TH AND 11TH DEFENDANTS.

No. 23.
Deposition of Mg.
Ne.

The witness having been duly sworn, says—

My name is Maung Ne. My age is 46. I now reside at Kaw-hnan. I am by occupation a gardener. My father's name is U Lugale.

I know the garden in Kawtun Kyun. I worked for four years. I rented it from Abdul Guffoor deceased. I paid him Rs. 800 a year. This year I paid his widow the 9th defendant Ma Satha Pu.

CROSS-EXAMINED BY MAUNG CHIT HLAING.

Maung Kun was the previous tenant.

Read over and acknowledged correct.

N. S. FIELD,

Judge.

19th September 1905.

Exhibit A.

No. 24.
Exhibit A.

H. E. McCOLL.

7th September 1904.

This Indenture made the 8th day of November 1894. **Between Pallaneappa Chetty, Narrianen Chetty and Vellien Chetty** money lenders, carrying on business in co-partnership in Moulmein under the style and firm of M. M. R. M. of the **one part** and **Abdul Rahman**, a trader of Kadoe of the **other part**.

Whereas by an indenture dated the 26th day of July 1890, and made between Ko Auk Poe, Ma Moot, Maung Auk Hta and Maung Htoon Hla, residents of Kadoe of the one part and the said firm of M. M. R. M. then represented by their agent Venkatachellum Chetty of the other part, all the hereditaments and premises hereinafter described namely:—

10

FIRSTLY.—A house and ground situated at Kadoe bounded on the North by a road, South by a road, East by Ko Kay's land and West by Kadoe Creek now in the occupation of the Mortgagors and which the said Mortgagors one and all declare to be the property of the said Ko Auk Poe and Ma Moot.

SECONDLY.—A piece of garden land situated at Kawtoon bounded on the North by a Creek, on the South by Ko Hta's land and West by Nga Shwe Thee's land containing an area of Acres 14.69 now in the occupation of Maung Law and which the said Mortgagors do one and all hereby declare to be the property of the said Ko Auk Poe and Mah Moot.

THIRDLY.—A piece of garden land situated in Kadoe Circle covered by Pottah Grant No. 6 of the year 1244 bounded on the North by Maung Moot's land, South by Maung Auk Hta's land, East by Ko Wine's land and West by a road now in the possession of the said Maung Htoon Hla, and which the said Mortgagors do one and all declare to be the property of the said Maung Htoon Hla.

20

FOURTHLY.—A piece of garden land situated in Kadoe Circle covered by Pottah Grant No. 5 of the year 1244 bounded on the North by Maung Htoon Hla's land, South by Maung Mhoe's land, East by Ko Wine's land and West by a road now in the possession of the said Maung Htoon Hla and which the said Mortgagors do one and all declare to be the property of the said Maung Htoon Hla were assured by the said Ko Auk Poe, Ma Moot, Maung Auk Hta, and Maung Htoon Hla, unto and to the use of the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty, their heirs, executors, administrators and assigns subject to a proviso therein contained for redemption of the said premises upon payment by the said Ko Auk Poe, Ma Moot, Maung Auk Hta and

Maung Htoon Hla their heirs, executors, administrators or assigns of the sum of Rs. 4,000 on the 26th January 1891 and Rs. 7,000 on the 26th July 1891 with interest for the same after the rate of one rupee per hundred rupees per mensem.

And whereas the said principal sum of Rs. 11,000 together with all the interest are still owing to the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty on the security of the hereinbefore recited indenture.

And whereas the said Abdul Rahman hath agreed to pay to the said Palaneappa Chetty, Narrainen Chetty and Vellien Chetty the sum of Rupees 5,600 on having a transfer of the said mortgage debt and the interest thereof and the securities for the same in manner hereinafter mentioned.

10 **Now this Indenture Witnesseth** that in pursuance of the said agreement and in consideration of the sum of Rupees five thousand six hundred (Rs. 5,600) to the said Palaneappa Chetty, Narrainen Chetty and Vellien Chetty paid by the said Abdul Rahman before the execution of these presents (the receipt whereof the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty do hereby acknowledge) they the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty do hereby assign unto the said Abdul Rahman his executors, administrators and assigns All that the said principal sum of Rupees eleven thousand secured by the hereinbefore recited indenture as aforesaid and all interest now due and henceforth to become due in respect of the same. **And the full benefit** of the covenants and provisions contained in the same indenture for securing the payment of the same principal sum and interest **Together with** full power to demand sue for recover and receive and give effectual receipts and discharges for the same respectively in the names of the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty or otherwise. **And all the right,** title, interest, property, claim and demand of them the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty to in and upon the said moneys and premises. **To have receive and take** the said principal sum and interest and
20 all other the premises hereby assigned or expressed so to be unto the said Abdul Rahman his executors, administrators and assigns absolutely.

And this indenture also witnesseth that in further pursuance of the said agreement and for the consideration aforesaid they the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty do hereby grant transfer and assign unto
• the said Abdul Rahman his heirs, executors, administrators and assigns **all** and singular the messuages, lands, hereditaments and premises comprised in or otherwise assured by the hereinbefore recited indenture or expressed so to be **and all the estate,** right, title, interest or claim and demand whatsoever of the said Pallaneappa Chetty, Narrainen Chetty and Vellien Chetty, into and upon the same.

To have and to hold the hereditaments and premises hereby granted transferred and assigned or expressed so to be unto and to the use of the said Abdul Rahman his heirs, executors, administrators and assigns subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the hereinbefore recited indenture.

In witness whereof the said parties to these presents have hereunto set their hands at Moulmein the day and year first before written.

In presence of (Sd.) PALLANEAPPA CHETTY.
(Sd.) EBRAHIM YUSOF. (Sd.) NARRAINEN CHETTY.
(Sd.) ASHRUF ALLY. (Sd.) VELLIEN CHETTY.
(Sd.) ABDUL RAHMAN.
(In native characters.)

Execution was admitted by Pallaneappa Chetty for self and as partner in the firm of M. M. R. M. of the one part and by the said Abdul Rahman. 10

(Sd.) In native character. (Sd.) (In native character.)

Identified by Ebrahim Yusof clerk to C. W. Law.

(Sd.) EBRAHIM EUSOFF.

The said Pallaneappa Chetty admitted receipt of consideration as stated in the document.

(Sd.) ?

Registrar.

8th November 1894. 20

(ON THE BACK.)

This document and the Indenture dated the 26th day of July 1890 referred to herein are hereby assigned to Ko Tha Hnyin who has been declared the purchaser hereof for a sum of Rs. 5,000 at a sale by public auction on the 28th day of August 1902 in execution of the decree in Suit No. 77 of 1901 (Ko Tha Hnyin *vs.* Mahomed Adam and 3 others) of the Court of the District Judge of Amerst.

Given under my hand and the seal of the Court this 31st day of October 1902.

(Sd.) G. F. ARNOLD, 30
District Judge of Amherst.

(39)

EXHIBIT 35.

IN THE COURT OF THE DISTRICT JUDGE, AMHERST.

CIVIL REGULAR No. 77 OF 1901.

Ko Tha Hnyin *vs.* Mahomed Adam and others.

Produced by Plaintiff.

Admitted in Evidence.

D. WILSON,

Judge.

20th December 1901.

EXHIBIT B.

No. 25.
Exhibit B.

H. E. McCOLL.

30th January 1905.

This Indenture made the 26th day of July 1890 **Between Ko Ouk Poe, Ma Moot, MOUNG OUK HTA and MOUNG HTOON HLA** residents of Kadoe hereinafter called the **Mortgagors of one part** and **M. M. R. M. Venkatachellum Chetty**, money lender of Fourth Division, Moulmein, hereinafter called the **Mortgagee of the other part.**

Whereas the said Mortgagee on the 20th May last obtained a decree in Civil Regular No. 56 of 1890 of the Court of Judge of Moulmein for Rs. 55,000 against the said Maung Ouk Hta and one Mah Kallo Thaw **And whereas** it has been agreed between the said Mortgagors and the said Mortgagee that the said Mortgagors shall pay, and the said Mortgagee shall accept Rs. 11,000 in full satisfaction of the said decree and costs. 10

And whereas the said Mortgagors, being unable to pay the said sum in cash have agreed to enter into a Mortgage bond and secure the re-payment of the same, with interest to the said Mortgagee in the manner hereinafter contained. **Now this Indenture witnesseth** that in pursuance of the said agreement and in consideration of the said mortgagee having on or before the execution of these presents certified to the Court that they have accepted Rs. 11,000 in full satisfaction of his decree and costs, they the said Mortgagors do hereby for themselves their heirs, executors, administrators covenant, with the said Mortgagee, his heirs, administrators and assigns that they the said Mortgagors their heirs, executors or administrators will pay to the said Mortgagee his executors, administrators or assigns the sum of Rs. 11,000 as follows:— 20

Rupees 4,000 on the 26th day of January 1891 and Rs. 7,000 on the 26th day of July 1891 with interest for the same at the rate of one rupee per cent. per mensem without any deduction. **Provided** that if default shall be made in payment of the said sum of Rs. 4,000 and the interest on the whole sum of Rs. 11,000 or any part thereof on the 26th day of January 1891 then and in such case the whole sum of Rs. 11,000 together with all interest shall at once become due and payable. 30

And this Indenture also witnesseth that in further pursuance of the said agreement and for the consideration aforesaid they the said Mortgagors do hereby each of them severally grant transfer and assign so far as they have any right, title or estate therein unto the said Mortgagee his heirs and assign.

FIRSTLY.—A house and ground situated at Kadoe, bounded on the North by a road, South by a road, East by Ko Kay's land and West by Kadoe Creek now in the occupation of the said (Mortgagors) and which the said (Mortgagors) one and all 40

declare to be the property of the said Ko Auk Poe and Ma Moot.

SECONDLY.—A piece of garden land situated at Kawtoon bounded on the North by a Creek, on the South by Ko Htaw's land, West by Nga Shwe Thee's land, containing an area of acres 14'69 now in the occupation of Maung Law and which the said Mortgagors do one and all hereby declare to be the property of the said Ko Auk Poe and Ma Moot.

10 THIRDLY.—A piece of garden land situated in Kadoe Circle covered by Pottah Garden No. 6 of the year 1244, bounded on the North by Maung Moot's land, South by Maung Auk Hta's land, East by Ko Wine's land and West by a road now in the possession of the said Maung Htoon Hla and which the said Mortgagors do one and all declare to be the property of the said Maung Htoon Hla.

20 FOURTHLY.—A piece of garden land situated in Kadoe Circle, covered by Pottah Grant No. 5 of the year 1244, bounded on the North by Maung Htoon Hla's land, South by Maung Mhoe's land, East by Ko Wine's land and West by a road now in the possession of the said Maung Htoon Hla and which the said Mortgagors do one and all declare to be the property of the said Maung Htoon Hla.

30 **Provided always** and it is hereby agreed and declared that if the said Mortgagors their heirs, executors, administrators or assigns shall pay unto the said Mortgagee his executors, administrators or assigns Rs. 4,000 on the 26th January 1891 and Rs. 7,000 on the 26th July 1891 with interest for the same after the rate of one rupee per cent. per mensem computed from the date of these presents without any deduction, then and in such case the said Mortgagee his executors, administrators or assigns will at any time thereafter upon the request and at the cost of the said Mortgagors, their executors, administrators or assigns reconvey and reassign the said premises unto the said Mortgagors, their heirs, executors, administrators and assigns or as they shall direct.

In Witness Whereof the said parties to these presents have hereunto set their hands at Moulmein the day and year first before written.

(Sd.) MAUNG AUK PO

(in Talaing.)

Mark of U AUK POE.

(Sd.) MAUNG TUN HLA

Mark of MA MOOT

for self and his brother, a minor.

made their

mark in my presence.

40 (Sd.) VENKATACHELLUM CHETTY MAUNG TUN HLA
(in Tamil.) in Burmese.)

In presence of

(Sd.) EMAN SAIB.

(Sd.) S. N. N. ARNACHELLAM CHETTY.

(Sd.) M. R. V. RAMASAWMY CHETTY.

(in native character.)

(Sd.) S. F. POPEN.

A commission is hereby issued under Section 38 of the Registration Act to Mr. S. F. Popen of this office for the purpose of enquiring whether the written mortgage bond has been executed by Ko Auk Poe and his wife Ma Moot and son-in-law Maung Auk Hta and son Maung Htoon Hla, residents of Kadoe, Mortgagors of the one part of M. M. R. M. Venkatachellum Chetty at present in disposed at Moulmein Mortgagee of the other part by whom it purports to have been executed.

10

(Sd.) MAUNG NGWE GAING,

Sub-Registrar.

(ON THE BACK.)

Having visited Ko Auk Poe and his wife Ma Moot, and Maung Auk Hta and his son Maung Htoon Hla at Kadoe and Mortgagors of the one part, and M. M. R. M. Venkatachellum Chetty at Moulmein, Mortgagee of the other part. I have this day examined the said Ko Auk Poe, Ma Moot, Maung Auk Ta and Maung Tun Hla at Kadoe and M. M. R. M. Venkatachellum Chetty at Fourth Division, Moulmein, who have been identified to my satisfaction by Eman Saib, a broker of Kadoe and S. N. N. Arnachellam Chetty and M. R. V. Ramasawmy Chetty of Fourth Division, Moulmein, and the within named Mortgagors and Mortgagees admitted the execution of the within mortgage deed.

20

In the presence of

S. F. POPEN,
Commissioner.

His KO AUK POE + Mark.

Her MA MOOT + Mark.

AUK HTA (in Talaing.)

MAUNG TUN HLA (in Burmese.)

for self and his brother (minor.) *

M. M. R. M. VENKATACHELLUM CHETTY.

(in native character.)

Moulmein,
Kadoe,

26th July 1890.

S. F. POPEN,

Commissioner.

26th July 1890.

30

EXHIBIT 35.

IN THE COURT OF THE DISTRICT JUDGE, AMHERST.

CIVIL REGULAR No. 77 OF 1901.

Ko Tha Hnyin *vs.* Mahomed Adam and others.

Produced by Plaintiff.

Admitted in Evidence.

D. WILSON,

Judge.

20th December 1901.

Translation.

Translator's note [The original is somewhat mutilated.]

No. 26
Exhibit C.

R. A. FINDLAY.

Exhibit C.

Produced by Plaintiff.

KAW TUN CIRCLE 1229.

GYAING—SALWEEN COURT.

CASE No. 20 OF 1874.

NGA LAN	 Plaintiff.	} Land Case.
NGA AUK PO	 Defendant.	

The " — " grant filed by the defendant was returned by the Court to the defendant on 21st November 1874.

10

(Sd.) — ?

21st November 1874.

No.	Village.	Name of applicant for land.	Area of the land.	Boundaries of the land.	Map.	Remarks.
			Ac. as. p.			
30	Kaw Tun	Auk Po	5 8 0	E by Nga Ka Yin's land. W by a Chaung. S by Ka Yin's land. N by a Chaung.	E 400 600 W S	Clear description of the forest or trees, etc.—Standing on the land. CLASS OF FOREST No. 1, Coco-nut, Marian, Nutmeg, Cloves, etc., exempted for 12 years. To work as a garden. Remission of revenue for 1229 to 12— ? Revenue must be paid from 1241.

20

Dated the 7th January 1868.

(Sd.) MAUNG SHWE AUNG,

11th lazau of Pyatho 1229.

Revenue Office Clerk.

(Sd.) — ?

Exhibit D.

Translation.

Plot—No. 261.

No. 27.
Exhibit D.

Owners—NGA TA and MI PAW.

Person now in possession :--Eman Saib of Kadoe Village.

No. 492.

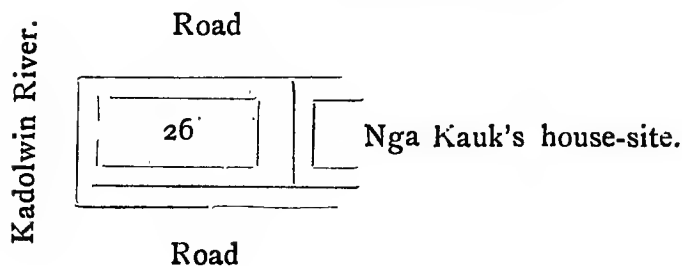
Kadoe Circle.

Kadoe Kwin.

Maulmein Township.

Amherst District.

For 1899—1900.



Applicant, Maung U Baw.

Date of application, 18th November 1901.

Copy supplied, 19th November 1901.

EXHIBIT I.
(Translation)
APPENDIX 34-
Register of revenue assessed in circles or areas of circles that are not cadastrally surveyed, Amherst District. Gyaing Salween Township,
Kaw Tun Circle from 1249 to 1252.

Year.	Village.	Kwin No.	Kwin.	Name of person.	MISCELLANEOUS GARDEN LAND.			Total.	10 per cent. cess.	Total amount.
					Betel.	Rate.	Amount.			
1249	Kadoe.	206	...	Nga Tun Hla and Nga Maung.	14 11	Rs. A. P. 2 8 0	Rs. A. P. 36 12 0	Rs. A. P. 36 12 0	Rs. A. P. 3 10 0	Rs. A. P. 40 7 0
1250	do.	204	Zweya.	do.	14 69	do.	36 12 0	36 12 0	3 11 0	40 6 0
1251	do.	204	do.	do.	14 69	do.	36 12 0	36 12 0	3 11 0	40 6 0

CONTINUED.

Year.	Village.	Kwin No.	Kwin name.	Nature of cultivation whether garden, miscellaneous, etc., with kinds of trees, etc.	Rate.	Serial No. of holding.	Name of owner.	Name of cultivator, tenant, or agent or mortgagee.	Total assessed area including area assessed at 2 annas.	Total amount of revenue assessed.	Total amount of revenue actually received.	10 per cent. cess.	Amount to be assessed this year.
1		3	4		15	16	17		20	22	23	24	25
					Rs. A. P.					Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1252	Kadoe.	3	Zweya	Betel-nut	2 8 0	201	S. S. R. M. Venkatachellum	S. S. R. M. Venkatachellum	25 75	64 6 0	64 6 0	6 7 0	70 13 0

Exhibit Ia.

FORM No. XII.

No. 29.
Exhibit Ia.

TRANSLATION.

Receipt for payment of land revenue and cesses on account of 1895.

Amherst District, Kyaikthanlaing Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

This receipt is given to———for Rs. as. p. only duly paid by him on account of the year 1256 :—

10	Name of person.	Details of holding.	Amount of land revenue paid.			Amount of cesses paid.			Total amount paid.		
			Rs. A. P.			Rs. A. P.			Rs. A. P.		
	No. 202, Abdul Rahman.	Garden A. D. 25 75	64	6	0	6	7	0	70	13	0

Seventy rupees and thirteen annas.

Date of payment 13th March 1895.

(Sd.) MAUNG SHWE BYAW,
Thugyi.(Sd.) ———?
D. C.
(Sd.) ———?
Akunwun.

Exhibit Ib.No. 30.
Exhibit Ib

FORM No. XII.

TRANSLATION.

Receipt for payment of land revenue and cesses on account of 1897.

Amherst District, Attaran Township, Kaw Tun Circle, Zwe Ya Kwin,
Kadoe Village.This receipt is given to——for Rs. as. p. only duly paid by him
on account of the year as under :—

Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.	10
	A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.	
No. 13, Abdul Rahman.	Garden II 26 10	91 35 0	9 14 0	100 8 0	

One hundred rupees and eight annas.

Date of payment 11th March 1897.

(Sd.) MAUNG SHWE BYAW,
Thugyi.

(Sd.) —— ?

D. C.

(Sd.) —— ?

Akunwun.

Exhibit Ic.

FORM No. XII.

No. 31.
Exhibit Ic.**TRANSLATION.**

Receipt for payment of land revenue and cesses on account of the year 1898.

Amherst District, Attaran Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

10 This receipt is given to for Rs. as. p. only duly paid by him on account of the year 1259 as under —

Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
	A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
No. 13, Abdul Rahman.	Garden 26.10 II @ $\frac{2}{8}$	91 35 0	9 14 0	100 8 0

One hundred rupees and eight annas.

Date of payment 15th March 1898.

(Sd.) MAUNG SHWE BYAW,

(Sd.) ———?

Thugyi.

D. C.

(Sd.) ———?

15th March 1898.

Akunwun.

Exhibit Id.No. 32.
Exhibit Id.

FORM XVI.

TRANSLATION.

Receipt for payment of land revenue and cesses. Amherst District, Moulmein Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

This receipt is given to _____ for Rs. _____ as p. only duly paid by him on account of the year 1260.

No. of holding.	Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
		A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
29	Abdul Rahman ...	Garden 26 10	91 35 0	9 14 0	100 8 0

10

One hundred rupees and eight annas.

Date of payment 2nd March 1899.

(Sd.) MAUNG SHWE BYAW,

(Sd.) — ?

Thugyi.

D. C.

(Sd.) — ?

Akunwun.

20

Exhibit 1e.

FORM XVI.

No. 33.
Exhibit 1e.

TRANSLATION.

Receipt for payment of land revenue and cesses. Amherst District, Moulmein Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

This receipt is given to for Rs. as. p. only duly paid him for the year 1261 as hereunder :—

10

No. of holding.	Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
		A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
29	Abdul Rahman ...	Paddy 25 04 II.	87 64 0	8 76 0	96 7 0

Ninety-six rupees and seven annas.

Date of payment 24th March 1900.

(Sd.) MAUNG SHWE BYAW,

Thugyi.

(Sd.) — ?

D. C.

(Sd.) — ?

Akunwun.

20

Exhibit If.No. 34.
Exhibit If.

FORM XVI.

TRANSLATION.

Receipt for payment of land revenue and cesses. Amherst District, Moulmein Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

This receipt is given to for Rs. as. p. only duly paid for 1265 as hereunder :—

No. of holding.	Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
		A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
29	Abdul Rahman ...	Miscellaneous II. 25 04	87 64 0	8 76 0	96 7 0

10

Ninety-six rupees and seven annas.

Date of payment 18th March 1901.

(Sd.) — ?

Thugyi.

(Sd.) — ?

D. C.

(Sd.) — ?

Akunwun,

20

Exhibit Ig.No. 35.
Exhibit Ig.**TRANSLATION.**

Receipt for payment of land revenue and cesses. Amherst District, Moulmein Township, Kaw Tun Circle, Zwe Ya Kwin, Kadoe Village.

This receipt is given to Abdul Rahman for Rs. 96 as. 6 only duly paid by him on account of the year 1263.

10

No. of holding.	Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
		A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
29	Abdul Rahman ...	Gardens 25 04 II.	87 64 0	8 76 0	96 6 0

Rupees ninety-six and annas six.

Date of payment 23rd March 1902.

(Sd.) MAUNG SHWE BYAW,

Thugyi.

(Sd.) R. SYMNS,

D. C.

Exhibit Ih.No. 36.
Exhibit Ih.**TRANSLATION.**

Receipt for payment of land revenue and cesses. For the year 1264.

Amherst District, Moulmein Township, Kaw Tun Circle, Zwe Ya Kwin,
Kadoe Village.This receipt is given to for Rs. only duly paid by him on account
of the year 1903-1904.

No. of holding.	Name of person.	Details of holding.	Amount of land revenue paid.	Amount of cesses paid.	Total amount paid.
		A. D.	Rs. A. P.	Rs. A. P.	Rs. A. P.
31	Abdul Rahman ...	Garden 25 04 II.	87 64 0	8 76 0	96 6 0

Rupees ninety-six and annas six.

Date of payment 23rd March 1902.

(Sd.) MAUNG SHWE BYAW,

Thugyi.

(Sd.) R. SYMNS,

D. C.

IN THE DISTRICT COURT OF AMHERST.

No. 37.
Judgment.

CIVIL REGULAR No. 64 OF 1903.

Dated Moulmein, the 3rd October 1905.

MAUNG THA HNYIN

VERSUS

MAUNG TUN HLA AND OTHERS.

FOR PLAINTIFF—MR. CHIT HLAING.

FOR DEFENDANTS—MR. GUFFOOR AND MR. BARRETTO.

10

Judgment.

In this suit the plaintiff's case is as follows, that :—

1. In July 1890, 1st defendant Maung Tun Hla, Ko Auk Po, Ma Mut, Maung Auk Ta mortgaged the four properties set out in the Schedule attached to the plaint on the deed Exhibit B to the firm of M. M. R. M. Venkatchellum Chetty for Rs. 11,000 at interest 1 per cent. per mensem.

2. Ko Auk Po and Ma Mut (his wife) are dead.

Their legal representatives are :—

20

	2nd	defendant,	Ma Lut Taw,	daughter.	
	3rd	do.	Ma U	do.	
	4th	do.	Maung Po Mya		} Grand children.
	5th	do.	Ma Hla Tha		
	6th	do.	Maung On Maung		} Great grand children.
	7th	do.	Ma Thein Me		
	8th	do.	Ma Sa Be		

3. Maung Auk Ta is dead and his legal representative is 1st defendant Maung Tun Hla.

4. In November 1894 the firm of M. M. R. M. Venkatachellum Chetty assigned the deed Exhibit B on the deed Exhibit A to Abdul Rahman.

30

5. In March 1895 the said Abdul Rahman and his father Emam Saib by a usufructory mortgage bond mortgaged the said four properties covered by Exhibit B and three other properties to one Abdul Guffoor the brother of Mahomed Adam (Emam Saib's son-in-law.)

6. In October 1895 Abdul Rahman deposited Exhibits A and B with plaintiff as collateral security for advances received.

7. In May 1898 two out of the three remaining immoveable properties were mortgaged by Emam Saib and Abdul Rahman to the Chetty firm of A. S. A. L.

8. In July 1901 plaintiff brought a suit and in December the same year obtained a mortgage decree against Emam Saib, Abdul Rahman, Mahomed Adam and Ma The (wife of Emam Saib) in respect of Exhibits A and B—viz., Civil Regular No. 77 of 1901.

9. In July 1902 Abdul Guffoor instituted a suit for foreclosure of his mortgage bond in respect of the four properties covered by Exhibits A and B and the three other properties and by consent obtained a mortgage decree (Civil Regular No. 118 of 1902). 10

10. In August 1902 the said Abdul Rahman filed a suit against the plaintiff for declaration that Exhibits A and B were not liable to plaintiff's mortgage decree (Civil Regular No. 159 of 1902) which suit was dismissed.

11. On the 28th August Exhibits A and B were sold in execution of the mortgage decree obtained by plaintiff in Civil Regular No. 77 of 1901 and were purchased by plaintiff with the permission of the Court. Abdul Guffoor having died since the filing of the suit his legal representatives, viz., Ma Satha Pu (widow), Ismail and Khatiza Be (the children) were substituted as defendants. 20
As defendants 6, 7 and 8 were minors Ma Byu was appointed guardian *ad litem* Ma Satha Pu was similarly appointed guardian *ad litem* of her children who were minors.

Plaintiff seeks for an account of the moneys now due under Exhibit B to be taken.

For a mortgage decree against the properties one and two and for a decree against all the defendants who represent the original mortgagors in their representative capacity and also against the 1st defendant personally for the amount found due together with one per cent. interest from the date of filing the suit up to date of satisfaction. 30

One Maung Shwe Hle was made a defendant but as no relief was claimed against the property in his possession his name was struck off.

First defendant Maung Tun Hla admits the truth of Exhibit B. He further admits having heard of the assignment to Abdul Rahman. He further adds that Abdul Rahman subsequently forcibly and illegally took possession of the garden described as No. 2 in the schedule and sold properties Nos. 3 and 4 to Shwe Hle and that the latter is in possession of the same up to date. That as regards property No. 1 the original house which was mortgaged was burnt down and that the present building was built by his mother the 2nd defendant Ma Lut Taw. 40

The 2nd and 3rd defendants say that they know nothing as to Exhibit B and put plaintiff to proof of the same.

That the house now standing on property No. 1 was built by the 2nd defendant at a cost of Rs. 1,000 in place of the original one which was burnt in 1897. That property No. 2 was not the property of Maung Auk Po and Ma Mut but belonged to 1st defendant and one Maung Maung. That at the time Exhibit B is alleged to have been executed Maung Maung was a minor. That no one had the right to alienate Maung Maung's half share in it.

That properties 3 and 4 were the joint property of the 2nd defendant and her deceased husband Ko Auk Ta. That the latter had no authority from her to mortgage her share.

10 The defence put in by the 9th, 10th and 11th defendants is:—

1. They admit about Exhibits A and B.
2. That the mortgagees being unable to redeem the said properties made over the same to Abdul Rahman and put him in possession.

That by a registered deed, dated 14th March 1895, Abdul Rahman and Emam Saib mortgaged properties Nos. 1 and 2 to Abdul Guffoor.

The latter filed a suit for foreclosure, viz., Civil Regular No. 118 of 1902 and obtained a mortgage decree.

20 That the defendants in that case failed to redeem the same within the period fixed and Abdul Guffoor became the absolute owner of the property.

That the said Abdul Rahman had no title or interest in properties Nos. 1 and 2 at the time of the sale when plaintiff purchased Exhibits A and B.

The other defendants though duly served, did not contest the claim. The following issues were framed:—

- 30 1. Was Exhibit B executed by Maung Tun Hla, Maung Auk Po, Maung Auk Ta and Ma Mut ?
2. Was the mortgage property made over to Abdul Rahman in satisfaction of the debt ?
3. Did Abdul Rahman mortgage properties 1 and 2 to defendant Abdul Guffoor ?
4. Did this property by virtue of the decree in Civil Regular No. 118 of 1902 become the absolute property of defendant Abdul Guffoor ?
5. What rights, if any, did plaintiff acquire by his purchase of the bonds Exhibits A and B ?
6. Is the house built on the land (item No. 1) by Ma Hlut Taw since the mortgage subject to the mortgage lien ?
- 40 7. To what relief is the plaintiff entitled ?
8. Did the firm M. M. R. M. assign the mortgage bond to Abdul Rahman ?

As regards issues Nos. 1 and 8 I am satisfied by the written statement of 1st defendant and the evidence of Arunachellum Chetty, Abdul Rahman and Maung Tha E that the properties were mortgaged and assigned on the deeds Exhibits B and A as alleged and that both must be answered in the affirmative.

As regards the second issue there is no evidence to prove (as alleged by Abdul Guffoor) that the said properties after the assignment were transferred to Abdul Rahman absolutely in satisfaction of the mortgage debt. The most that Abdul Rahman testifies to (and he is the most important witness on the point) is that prior to purchasing Exhibit B and the other title deeds that he consulted the 2nd defendant Ma Hlut Taw as to whether she and the others had mortgaged the said properties to the firm of M. M. R. M. That Ma Hlut Taw admitted that she and the others had and were not in a position to redeem them and that he was at liberty to purchase the same. That thereupon he purchased the same on the deed of assignment Exhibit A and got the mortgagors to transfer the land in the Revenue registers from the name of M. M. R. M. to his name. The latter part of his evidence is not corroborated by Thugyi Maung Byaw, who says he made the mutation of names at the request of Abdul Rahman's father Emam Saib on the mere production of the mortgage bond Exhibit B. From the above it is quite clear that Abdul Rahman stepped into the shoes of M. M. R. M. and obtained no better title than that of mortgagee. It is admitted that when Exhibit B was executed that the land was put in the name of M. M. R. M. so the mutation of names on the execution of Exhibit A in no way goes to show that Abdul Rahman became the absolute owner. No importance moreover can be attached to the fact that when the Thugyi demanded tax from the mortgagors that the latter referred him to the mortgagee. Apart from the evidence of Abdul Rahman it is an admitted fact that 2nd defendant Ma Hlut Taw has all along been and is up to the present date in possession of the property described at No. 1.

For the above reasons I decide the second issue in the negative.

Issue 2 having been decided in the negative there is no need to go into issues Nos. 3 and 4.

As regards the fifth issue plaintiff has waived his claim to any lien on properties 3 and 4.

In view of this, and issue 2 being found in the negative plaintiff has acquired the rights of the original mortgagee as contained in Exhibit B in respect of properties 1 and 2.

As regards issue Exhibit 6 I am satisfied from the evidence that the present house standing on the land was built by the 2nd defendant Ma Hlut Taw. Mr. Guffoor for Ma Hlut Taw argues that as the house was built after the old house had been burned down and did not form part of the original mortgaged premises that it should not be liable for the mortgage debt. The learned Advocate is unable to cite any authority in support of his argument.

Ma Hlut Taw alleges that when she built the house that she was ignorant of Exhibit B but the evidence proves conclusively that she was not. I am

unable to find any ruling in all fours with the present case. In the law of mortgage in India by Ghose page 341 it is laid down that Sections 70 and 71 of the Transfer of Property Act deal with accession to mortgaged property and that in the absence of any contract to the contrary, the law gives the benefit of such accessions to the mortgagee. Everything, therefore, that the mortgagor adds to the property in mortgage to improve its value or any natural increase will form part of the security.

10 Thus fixtures attached to the land by the mortgagor after the mortgage would be included in the security. On page 342 it goes on to say that Chattels annexed to land become fixtures. As a rule buildings erected on the mortgaged land will be treated as an accession to the mortgaged property unless erected merely for temporary use.

Again on page 350 it lays down--

" Where the mortgagor himself makes an acquisition it is no very great hardship on him to hold that it should endure for the benefit of the mortgagee."

In view of the above passages and the fact that Ma Hlut Taw was cognizant of Exhibit B and is the legal representative of the original mortgagor I am of opinion that the plaintiff is entitled to a lien on the house.

20 With regard to issue 7 it has not been asserted by any of the defendants that any of the principal and interest due on the mortgage Exhibit B has been paid. This being so plaintiff is entitled to a mortgage decree in properties 1 and 2 to the extent of Rs. 11,000 together with interest at 1 per cent. per mensem from the date of the execution of Exhibit B *viz.*, 26th July 1890 together with costs on that amount. A period of six months will be allowed to Maung Tun Hla and the other legal representatives of the original mortgagors who have been made parties to the case for redemption. Interest at 1 per cent. per mensem will be allowed from the date of filing the suit up to the date of satisfaction, should the properties be redeemed, or up to the date of foreclosure.

30 Plaintiff must stamp the plaint in accordance with the decretal amount failing which the decretal amount will be fixed at Rs. 10,000.

N. S. FIELD,

Judge.

PRELIMINARY DECREE FOR SALE OF MORTGAGED PROPERTY.

(SECTION 88, TRANSFER OF PROPERTY ACT.)

No. 38.
Decree.

IN THE DISTRICT COURT OF AMHERST.

CIVIL REGULAR SUIT No. 64 OF 1903.

MAUNG THA HNYIN, Merchant, 5th Division, Moulmein PLAINTIFF.

VERSUS

- | | |
|---|----------------|
| 1. MAUNG TUN HLA, Chiengmai. | |
| 2. MA HLUT TAW. | |
| 3. MA U | } Kadoe. |
| 4. MAUNG PO MYA | |
| 5. MA HLA THA | |
| 6. MAUNG ON MAUNG | |
| 7. MA THEIN ME | } Minors. |
| 8. MA SA BE | |
| 9. MA SATHA PU, widow of Abdul Guffoor. | |
| 10. ISMAIL | } children do. |
| 11. KHATIZA BE | |
- DEFENDANTS.

10

CLAIM FOR SALE OF MORTGAGED PROPERTY.

PRELIMINARY DECREE.

20

It is hereby declared that on the date hereof there is due to the plaintiff by the defendants on the mortgage of properties 1 and 2 mentioned in the plaint, the sum of Rs. 11,000 for principal, and the sum of Rs. 20,038 for interest, and the further sum of Rs. 1,616 is payable by the defendants as costs of this suit.

And it is ordered that upon the defendants paying to the plaintiff or into this Court the total of the aforesaid sums, viz., Rs. 32,654 on or before the 3rd day of April 1906 with further interest at 1 per cent. per mensem on principal, the plaintiff shall deliver up to the defendants or to such person as he appoints all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendants free from all encumbrances created by the plaintiff or any person claiming under him, or by those under whom he claims, and shall, if necessary, put the defendants into possession of the property.

30

And it is further ordered that if such payment shall not be made as aforesaid, or within such further time as the Court may allow, then the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of sale (after defraying thereout the expenses of the sale) shall be paid into this Court and, applied in payment of what is due to the plaintiff; and the balance, if any, shall be paid to the defendants or other persons entitled to receive the same.

Given under my hand and the Seal of the Court 3rd day of October 1905.

N. S. FIELD,

Judge.

40

District Court, Amherst.
Signed on 30th October 1905.

COSTS OF SUIT.

Particulars.	Plaintiff.	9th, 10th, 11th defendants.	1st to 8th defendants.
UNPAID STAMP Rs. 460.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1. Stamp for plaint	935 0 0	.....	.....
2. Stamp for power ... ..	.....	0 8 0	0 8 0
3. Stamp for petition	1 8 0	1 0 0	0 8 0
4. Advocate's fee on Rs. 27,885 ...	629 0 0	629 0 0	629 0 0
5. Translation fee ... ..	.....	.....	.....
6. Subsistence for witnesses	13 0 0	10 8 0	2 0 0
7. Commissioners's fee	10 0 0	.....	.....
8. Service of process	27 8 0	6 0 0	1 0 0
Total	1,616 0 0	647 0 0	633 0 0

D. O. SULLIVAN,
Registrar.

Amount payable by defendants to plaintiff.

Principal and interest	...	...	Rs.
Interest up to date	...	...	27,885
Costs	...	...	3,153
			1,616
		Total	32,654

Plaintiff must stamp the plaint in accordance with the decretal amount failing which the decretal amount will be fixed at Rs. 10,000.

N. S. FIELD,
District Judge,

Record of

The Chief Court of Lower Burma.

Civil First Appeal No. 1 of 1906.

DIARY.
IN THE CHIEF COURT OF LOWER BURMA.

No. 36
Diary.

CIVIL FIRST APPEAL No. 1 OF 1906.

MA SATHA PU AND TWO OTHERS

VERSUS

MAUNG THA HNYIN.

4th January 1906.—Presented by Mr. Patail.

S. MINUS.

10

8th January 1906.—Appeal lies under Section 28 (1) (c) Lower Burma Courts Act and is in time. Stamp Rs. 375 correct the appeal being laid at Rs. 7,500. Submitted to the Chief Judge and Mr. Justice Fox.

S. MINUS.

9th January 1906.—Admitted.

H. ADAMSON,
Chief Judge.

20

20th February 1906.—Copy sheets received.

SHWE U,
Head Licensed Copyist.

20th February 1906.—Translation fee Rs. 14 paid.

PO MAUNG.

5th March 1906.—Fix. 14th May 1906.

S. MINUS

15th March 1906.—Process fee paid to-day.

PO YAIN.

5th April 1906.—Application supported by an affidavit, filed by Messrs. Agabeg and Kin on behalf of Mr. Chit Hlaing, advocate for the respondent, praying that the appellants may be called upon to furnish security for the costs of this appeal and of the Lower Court.

Submitted.

E. W. W. XAVIER.

9th April 1906.—Let notice issue to appellant.

H. ADAMSON.

11th April 1906.—Fix. 14th May 1906.

E. W. W. XAVIER.

14th May 1906.—(Present the Officiating Chief Judge and Hartnoll, J.)

On the application of J. R. Das *vice* Mr. Cowasjee for appellant the hearing of the case is adjourned till 2nd July 1906.

C. E. FOX,
Officiating Chief Judge.

2nd July 1906.—N. M. Cowasjee is ill. Patail applies for postponement. Chit Hlaing has started to-day. Patail is informed that the appeal will be heard to-morrow.

BA THEIN.

3rd July 1906.—(Present the Officiating Chief Judge and Irwin, J.)

Case called. Patail files cross affidavit. Heard Chit Hlaing for applicant and E. M. Patail for respondent on application as to security. Judgment reserved.

C. E. FOX,
Officiating Chief Judge.

9th July 1906.—Orders passed on the application as to security.

BA THEIN.

9th July 1906.—For hearing on merits on 12th November 1906.

12th November 1906.—(Present the Chief Judge and Hartnoll, J.) N. M. Cowasjee appears for appellants. Chit Hlaing appears for respondent. Heard. Orders reserved.

C. E. FOX,

Chief Judge.

10

23rd April 1906.—Judgment delivered.

BA THEIN.

IN THE CHIEF COURT OF LOWER BURMA.

No. 40.
Memorandum of
Appeal.

(APPELLATE JURISDICTION).

CIVIL FIRST APPEAL No. 1 OF 1906.

- | | | |
|--|---|---|
| <ol style="list-style-type: none">1. MA SATHA PU, Widow.2. ISMAIL, Son.3. KHATIZA BEE, Daughter both minors
represented for the purposes of this
appeal by their mother Ma Satha
Pu, the 1st appellant (original 9th
defendant). | } | <p>All heirs and legal personal
representatives of M. A. Guffoor,
deceased, all of Kadoe, Moul-
mein.</p> |
| | | <p>APPELLANTS.</p> |

VERSUS

MAUNG THA HNYIN, Merchant of 5th Division, Moulmein. RESPONDENT.

Appeal valued at Rs. 7,500 the market value of properties known as 1 and 2.

Appellants abovenamed being aggrieved at the judgment and decree of the District Court of Amherst passed on the 3rd day of October 1905 in Civil Regular Suit No. 64 of 1903 appeals to this Honourable Court upon the following grounds.

1. For that the said Judge should have held that the mortgaged property was made over to Abdool Rahman in satisfaction of the debt.
2. For that the said Judge should have held that the said Abdool Rahman mortgaged the items 1 and 2 in the schedule to the appellant and that the appellant became the sole and absolute owner of the property with possession.
3. For that the said Court should have decided the second issue framed in the case in the affirmative.
4. For that the said Court erred in holding that the respondent had acquired the rights of the original mortgagee as contained in Exhibit B in respect of properties 1 and 2.
5. For that the said Court erred in finding that the respondent was entitled to a mortgage decree on properties 1 and 2.

6. For that the judgment of the said Court is against the evidence, the weight of evidence and the probabilities of the case and bad in law.

The appellants pray that the records of the case be sent for and that after perusal and consideration thereof the decree of the said District Court of Thaton in so far as it affects the appellants may be reversed and that such other decree may be passed as to this Honourable Court may appear proper and that the appellant may be awarded the costs of this appeal.

10

COWASJEE AND COWASJEE,
Appellants' Counsel.

COWASJEE AND COWASJEE,
for Appellants.

Rangoon, 4th January 1906.

IN THE CHIEF COURT OF LOWER BURMA.

No. 41.
Judgment of the
Chief Judge.

CIVIL FIRST APPEAL No. I OF 1906.

Dated Rangoon, the 23rd April 1907.

MA SATHA PU AND TWO OTHEES

VERSUS

MAUNG THA HNYIN.

FOR APPELLANTS	....	....	N. M. COWASJEE.
FOR RESPONDENT	....	....	CHIT HLAING.

JUDGMENT.

10

The plaintiff sued for a mortgage decree by sale of two out of four properties specified in a schedule to his plaint.

He stated his cause of action as follows:—By a deed dated the 26th July 1890 the 1st defendant, the parents of the 2nd and 3rd defendants and grand parents of the 4th and 5th defendants and great grand parents of the 6th, 7th and 8th defendants, and one Ouk Hta had mortgaged the four pieces of land to a Chetty firm.

By a deed dated the 8th November 1894 the Chetty firm had transferred the mortgage to one Abdul Rymon.

In 1901 the plaintiff had obtained a decree against Abdul Rymon, and in execution of the decree he had attached the money due on the original mortgage, and at the sale held after the attachment had bought Abdul Rymon's right, title and interest in it. 20

Before the attachment Abdul Rymon had sold two of the properties, but the plaintiff did not know how much he had realized by the sale. He made no claim as against these, but as against the other two properties, which were the first two described in the schedule, he asked for a decree for an account of what was due on the mortgage, and for sale of those properties if the amount due should not be paid.

It may be noted here that the plaintiff made no claim in the plaint that he had acquired any rights over the property by reason of the mortgage deed of the 26th July 1890 and the Transfer Deed of the 26th July 1894 having been deposited with him. Abdul Rymon put in a petition that he and others should 30

be made parties to the suit on the ground that after the assignment to him of the mortgage, it had been satisfied by the mortgagors making over the properties to him absolutely, and he had mortgaged the properties in suit to one M. Abdul Guffoor, who had since obtained a foreclosure decree against him, and who was now owner of the properties. He had sold the other properties which had again been sold, and one Maung Tha Aye was then the owner of those two properties. M. Abdul Guffoor and Maung Tha Aye were added as defendants to the suit, but subsequently Maung Tha Aye was struck out, because he admittedly had no interest in the two properties the plaintiff was proceeding against.

M. Abdul Guffoor put in a written statement setting up what Abdul Rymon had stated in his petition. The deed he relied on as forming his title to the properties in suit was a registered deed of mortgage from Abdul Rymon and his father Eman Saib to himself dated the 14th March 1895. He had brought a suit on this mortgage in 1902, and had obtained a foreclosure decree, and on the defendants' having failed to pay the amount due under the decree the lands in suit had become his.

The issues fixed were as follows :—

1. Was the original mortgage duly executed by Maung Tun Hla, Maung Auk Po, Maung Auk Ta, and Ma Mut ?

2. Was the mortgaged property made over to Abdul Rahman in satisfaction of the debt ?

3. Did Abdul Rahman mortgage items Nos. 1 and 2 in the schedule to the 9th defendant Abdul Guffoor ?

4. Did this property by virtue of the decree in Civil Regular Suit No. 118 of 1902 of this Court (Abdul Guffoor's suit on the mortgage to him) become the absolute property of the 9th defendant ?

5. What rights, if any, did the plaintiff acquire by his purchase of the bond ? (meaning his purchase of the original mortgage and the transfer to Abdul Rahman.)

6. Is the house built on the land (item No. 1) by Ma Hlut Taw since the mortgage subject to the mortgage lien ?

7. To what relief is the plaintiff entitled ?

8. Did the firm M. M. R. M. assign the mortgage bond to Abdul Rahman ?

There was really no dispute as to some of the matters mentioned in these issues.

The District Judge found in the affirmative on the first issue, but in the negative on the second issue. He considered that his having decided the

second issue in the negative was a good reason for not going into the questions involved in the third and fourth issues, and he came to no decision on them.

On the 5th issue he found that the plaintiff had acquired the rights of the original mortgagee in respect of the properties involved in the suit. It is unnecessary to refer to his finding on the 6th issue because that was raised by one of the parties who has not appealed.

Finally he gave the plaintiff a mortgage decree for Rs. 11,000 with interest at one per cent. per mensem from the 26th July 1890 and the costs of the suit. This decree was obviously wrong in that what Abdul Rymon or Rahman had received on sale of two of the properties had necessarily to be given credit for, and moreover the plaintiff had not even claimed such a decree as that which the Judge gave. 10

The appellants are the legal representatives of M. Abdul Guffoor. They appeal on the ground, amongst others, that the Judge should have decided the 2nd issue in their favour, and that he should have come to a finding on the 3rd and 4th issues, and such findings should have been in their favour.

I am not prepared to hold that the Judge decided the 2nd issue wrongly, but his finding that the mortgaged property was not made over to Abdul Rahman in satisfaction of the debt afforded no ground for not deciding the 3rd and 4th issues. 2

The mortgage deed of the 14th March 1895 by which Abdul Rymon mortgaged the properties in suit to M. Abdul Guffoor is filed in Suit No. 118 of 1902 in which M. Abdul Guffoor obtained his foreclosure decree. No doubt Abdul Rymon purports by it to transfer the land as owner, but if he was only mortgagee, the deed operated to transfer his interest as mortgagee. The rule is expressed in Section 8 of the Transfer of Property Act thus—"Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof."

It was argued in this Court that the mortgage to M. Abdul Guffoor was 30 collusive and fraudulent, but no such question was raised in the District Court, nor was the fact that the mortgage deed had been executed contested.

In such a case it seems unnecessary to remand the case for a finding on the 3rd and 4th issues.

The deed was executed and registered long before the plaintiff bought whatever he did buy in execution of his decree against Abdul Rymon, and consequently the latter at the time of the sale had no interest in the property in suit either as owner or mortgagee.

The plaintiff then did not stand in the shoes of the original mortgagee, and he had no right to proceed against the property in suit or against the surviving 4

original mortgagor, and legal representatives of the other mortgagors, or against any one now interested in the properties.

I would allow the appeal, and would reverse the decree of the District Court, and dismiss the suit and order the plaintiff to pay the appellants' costs in the District Court and in this Court. As the ground that the plaintiff had no rights as mortgagee was common ground to all the defendants, the decree of the District Court should under Section 544 of the Code of Civil Procedure be reversed and set aside as against all the defendants.

C. E. FOX,

10 23rd April 1907.

Chief Judge.

Notes.

The Judge should have insisted on the parties filing certified copies of the various portions of other records of the Court on which they relied, and he should now call upon them to file such copies. It is very inconvenient for an Appellate Court to have to send for records other than the record of the case under appeal, and to have to hunt through these for matters which have been relied on.

20 The plaintiff should be called on to file certified copies of the decree he obtained in Civil Regular No. 77 of 1901, and of the Proclamation of Sale, a copy of which is filed in Suit No. 159 of 1902, and of any other documents he relied on.

The 9th defendant should be called on to file certified copies of the decree in Suit No. 118 of 1902, and of the mortgage deed of the 14th March 1895 filed in that suit.

C. E. FOX,

Chief Judge.

No. 42.
Judgment of Mr.
Justice Hartnoll.

Maung Tha Hnyin bought at the Court Sale on the 28th August, 1902, the right, title and interest of Abdul Rahman in the properties the subject of the present suit. This right, title and interest seems to have been the interest Abdul Rahman secured by the assignment to him of the mortgage deed of the 26th July 1900 subject to a further charge of Rs. 6,000 created on the property by himself on the 14th March, 1895, and with regard to which a decree dated the 21st July, 1902, was then existing. Maung Tha Hnyin must be held in my opinion to have stood in Abdul Rahman's shoes in every respect. He did not satisfy the decree and so by the terms of it he lost all interest, that he obtained in the property by his purchase at the Court Sale, on the 21st January 1903. I am therefore of opinion that he cannot now sue in respect of it on the case that he now sets up.

At the hearing of the appeal it was suggested that the deed of the 14th March, 1895, was a fraudulent one and further that Section 78 of the Transfer of Property Act should be considered. These matters were not part of Maung Tha Hnyin's case and are not mentioned in the pleadings and in my opinion they cannot now be raised. Maung Tha Hnyin sued as the auction purchaser of Abdul Rahman's right, title and interest and on that alone.

I therefore concur in the order proposed by the learned Chief Judge.

H. S. HARTNOLL,

23rd April 1907.

Judge.

DECREE.

SECTION 579 OF THE CODE OF CIVIL PROCEDURE.

No. 43.
Decree.

IN THE CHIEF COURT OF LOWER BURMA.

CIVIL APPELLATE JURISDICTION.

CIVIL FIRST APPEAL No. 1 OF 1906.

1. MA SATHA PU
2. ISMAIL
10 3. KHATIZA BEE } Minors by their mother } Heirs and legal representa-
Ma Satha Pu. } tives of M. A. Guffoor,
deceased.

APPELLANTS.

VERSUS

MAUNG THA HNYIN RESPONDENT.

Preferred on the 4th day of January 1906 from the decree of the District Court of Amherst, dated the 3rd day of October 1905.

The valuation of the appeal is Rs. 7,500.

20 This appeal coming on for hearing on the 12th day of November 1906, before the Honourable the Chief Judge and Mr. Justice Hartnoll in the presence of N. M. Cowasjee for the Appellants and of Chit Hlaing for the respondent, it is ordered that the appeal be allowed and that the decree of the District Court be reversed and the suit dismissed.

It is further ordered that the decree of the District Court be reversed and set aside as against all the defendants under Section 544, Civil Procedure Code.

And it is further ordered that the respondent aforesaid do pay to the appellants aforesaid the sum of Rs. 737-14-0 being the amount of costs incurred by the appellants aforesaid in this Court.

And it is further ordered that the respondent aforesaid do pay to the appellants aforesaid the sum of Rs. 368 being the amount of costs incurred by the appellants aforesaid in the Lower Court.

Given under my hand and the Seal of the Court this 23rd day of April 1907.

I. G. LLOYD,

Registrar.

30
2nd May 1907.

MEMORANDUM OF COSTS INCURRED IN THIS APPEAL.

	By the Appellants.			By the Respondent.		
	Rs.	A.	P.	Rs.	A.	P.
In the.....						
Court of.....						
In the District Court of Amherst		368	0 0	877	0 0	
In the Chief Court of Lower Burma						
Court Fees for Memorandum of Appeal		375	0 0	.....		
Court Fees for Copies of Decree and Judgment		1	8 0	.....		10
Court Fees for Issue of Process		3	0 0	.....		
Advocate's Fee		300	0 0	300	0 0	
Printing, Copying, or Translation Charges		58	6 0	.....		
Total Rs.		1,105	14 0	1,177	0 0	

S. MINUS,

Assistant Registrar and Taxing Officer.

CHIT HLAING,

Advocate for Respondent. 20

Record of

The Chief Court of Lower Burma.

Civil Miscellaneous Application

No. 40 of 1907.

DIARY.
IN THE CHIEF COURT OF LOWER BURMA.

No. 44.
Diary.

CIVIL MISCELLANEOUS APPLICATION NO. 40 OF 1907.

MAUNG THA HNYIN

VERSUS

MA MYA SU AND ELEVEN.

17th June 1907.—Presented by Mr. Patail.

MAUNG ME.

10

Application under Section 596, Civil Procedure Code, for a certificate under Section 600, Civil Procedure Code, for leave to appeal to His Majesty in Council. It is in time. Submitted to Chief Judge. (Civil First Appeal No. 1 of 1906, submitted.)

S. MINUS.

18th June 1907.—The appeal was valued at Rs. 7,500 only. Let notice issue to the respondents to show cause. Call for the record of the suit.

C. E. FOX,

Chief Judge.

20

18th June 1907. Fix. 5th August 1907.

S. MINUS.

4th July 1907.—Process fee paid and notice issued.

PO YAIN.

8th July 1907.—Application supported by an affidavit made by Mr. Chit Hlaing, advocate for the applicant praying that the execution of the decree of

this Court in Civil First Appeal No. 1 of 1906 may be stayed on the applicant furnishing security for costs awarded to the respondents, pending the disposal of this application for leave to appeal to His Majesty in Council.

Submitted to Chief Judge.

S. MINUS.

9th July 1907.—Fix for admission on. 15th July 1907.

C. E. FOX,
Chief Judge.

15th July 1907.—(Present Chief Judge and Moore, J.) Case called.
Heard Agabeg for the applicant on the application for stay of execution:

Notice to issue to respondents to show cause against the application.

C. E. FOX,
Chief Judge.

16th July 1907.—Fix. 26th August 1907.

S. MINUS.

16th July 1907.—Notices on 9, 10 and 11th respondents returned duly
served for the application for leave to appeal.

MAUNG ME.

30th July 1907.—Notices on 2nd to 8th respondents for the application for
leave to appeal, returned not duly served for want of the affidavit of identifier
who pointed out the respondents.

PO THET.

6th August 1907.—This is not good service issue fresh notices for the
26th August 1907.

S. MINUS.

8th August 1907.—Process fee on application for stay of execution paid and notice issued.

PO YAIN.

10th August 1907.—Fresh process fees paid and notice issued.

PO YAIN.

20th August 1907.—Notice on the application for stay returned not duly served for want of the affidavit of the identifier.

10

MAUNG ME.

22nd August 1907.—Notices on application for leave to appeal to Privy Council on 2nd to 8th respondents returned duly served.

Notice on 1st respondent not yet returned.

MAUNG ME.

26th August 1907.—Issue fresh notices for 11th November 1907.

S. MINUS.

20 27th August 1907.—Fresh process fee on application paid and notice issued.

PO YAIN.

29th August 1907.—Notice on the 1st respondent on application for leave returned with a report that the said respondent died in November 1905.

MAUNG ME.

29th August 1907.—Inform applicant's advocate.

S. MINUS.

30

29th August 1907.—Informed.

PO THET,

5th September 1907.—Application presented by Mr. Agabeg, advocate for the applicant, praying that Ma Mya Su and Maung Tun Win, a minor, may be substituted in place of Maung Tun Hla, deceased, and that Ma Mya Su may be appointed guardian *ad litem* for Maung Tun Win, minor. Maung Tun Hla is reported to have died as far back as November 1905. This application is therefore long time barred *vide* Article 175 (c) Schedule (ii), Limitation Act.

Submitted to the Chief Judge.

S. MINUS.

6th September 1907.—Applicant must file an affidavit as to the year, month and day of Maung Tun Hla's death.

C. E. FOX,

10

Chief Judge.

7th October 1907.—Affidavit of Ma Mya Su, the wife of Maung Tun Hla, deceased, filed.

S. MINUS.

8th October 1907.—Fix for admission of application on 11th November 1907.

C. E. FOX,

Chief Judge.

11th October 1907.—Notices on 9th, 10th and 11th respondents on the application for stay, returned duly served.

20

PO THET.

11th November 1907.—(Present Chief Judge and Irwin, J.) Agabeg for applicant. N. M. Cowasjee for 9th and 10th respondents.

ORDER.

We are satisfied that as regards the amount in dispute the case fulfils the requirements of Section 596 of the Code of Civil Procedure, but a certificate under Section 600 will not issue at present. The matter will be put down for further hearing together with the application of the 5th September.

C. E. FOX,

Chief Judge.

A. M. B. IRWIN,

Judge.

11th November 1907.—Order on the application for stay of execution. We do not think that any sufficient special cause has been shown for making an order under Section 608 of the Code of Civil Procedure.

C. E. FOX,
Chief Judge.

A. M. B. IRWIN,
Judge.

Order on the application presented on the 5th September 1907.

10 Mr. Agabeg's client will be allowed one month's time within which to produce proof that he had sufficient cause for not making the application earlier.

C. E. FOX,
Chief Judge.

A. M. B. IRWIN,
Judge.

25th November 1907.—Affidavit of Maung U Baw, applicant's son, filed to-day. Submitted.

MINUS.

20

Fix again for 2nd December 1907.

C. E. FOX,
Chief Judge.

2nd December 1907.—(Present Chief Judge and Irwin, J.) Case called. Heard Agabeg for applicant. Orders reserved.

C. E. FOX,
Chief Judge.

30

16th December 1907.—Judgment delivered.

BA THEIN.

17th December 1907.—Submitted for orders as to whether a certificate is to issue now (please see order dated 11th November 1907).

S. MINUS.

17th December 1907.—A certificate under Section 600 of the Civil Procedure Code may now issue.

C. E. FOX,
Chief Judge.

A. M. B. IRWIN,
Judge.

IN THE CHIEF COURT OF LOWER BURMA.

APPELLATE JURISDICTION.

No. 45.
Application under
Section 596, C. P.
C. for certificate.

CIVIL MISCELLANEOUS APPLICATION No. 40 OF 1907.

MAUNG THA HNYIN, Merchant of Moulmein PETITIONER.

VERSUS

- | | | |
|----|---|--|
| 10 | 1. MA MYA SU AND MAUNG TUN WIN, minor by his guardian, Ma Mya Su, legal representatives of Maung Tun Hla, deceased. | |
| | 2. MA LUT TAW. | } Petty traders, residing at Kado, Moulmein. |
| | 3. MA U. | |
| | 4. MAUNG PO MYA. | |
| | 5. MA HLA THA. | |
| | 6. MAUNG ON MAUNG. | |
| | 7. MA THEIN ME. | } Residing at 4th Division, Moulmein. |
| | 8. MA SA BE. | |
| | 9. MA SATHA PU. | |
| 20 | 10. ISMAIL. | |
| | 11. KHATIZA BI. | |
- RESPONDENTS.

To

THE HONOURABLE JUDGES OF THE COURT.

The Petition of the Petitioner abovenamed.

RESPECTFULLY SHEWETH,

1. That on the 23rd April 1907 this Honourable Court was pleased in Civil 1st Appeal No. 1 of 1906 to reverse the decree of the District Court of Amherst, dated 3rd October 1905 in Civil Regular No. 64 of 1903 and to dismiss your petitioner's suit with costs in both Courts.
- 30 2. That your petitioner being aggrieved and dissatisfied at the judgment and decree of this Honourable Court is desirous of appealing to His Majesty in Council.
3. That the value of the subject-matter of the suit fulfils the requirements of Section 596, Civil Procedure Code.

4. That your petitioner as at present advised submits that the following are his grounds of appeal, which he begs leave to add, amend, cancel or otherwise alter, pending admission of his appeal to His Majesty in Council at the advice of his counsel, *viz* :—

- (a). For that this Honourable Court was wrong in deciding 3rd and 4th issues without remanding the suit to the Lower Court for decision on those points.
- (b). For that this Honourable Court erred in holding that it was no part of your petitioner's original case that the mortgage of the properties to M. Abdul Guffoor was collusive and fraudulent. 10
- (c). For that this Honourable Court was wrong in holding that Abdul Rahman transferred his interest as assignee of the original mortgagee contrary to the defence set up by M. Abdul Guffoor in the Lower Court.
- (d). For that the decision of this Honourable Court was against the recorded evidence and documents before it, and also against the probabilities of the case.

Wherefore your petitioner prays that this Honourable Court will be pleased to grant him a certificate that this is a fit case for appeal to His Majesty in Council. 20

CHIT HLAING,

Petitioner's Counsel.

Maulmein, 8th June 1907.

KO THA HNYIN,

(in Burmese.)

Petitioner.

IN THE CHIEF COURT OF LOWER BURMA.

APPELLATE CIVIL JURISDICTION.

CIVIL MISCELLANEOUS APPLICATION No. 40 OF 1907.

MAUNG THA HNYIN, Merchant of Moulmein PETITIONER.

VERSUS

1. MA MYA SU AND MAUNG TUN WIN, minor by his friend Ma Mya Su, legal representatives of Maung Tun Hla, deceased, on his own account and as the legal representative of the deceased Maung Auk Ta one of the mortgagors.

2. MA LUT TAW. } Children of the deceased Ko Auk Po and Ma Mut two of the mortgagors.

4. MAUNG PO MYA. } Grand children of the deceased Ko Auk Po and Ma Mut two of the mortgagors.

6. MAUNG ON MAUNG. } Great grand children of the deceased Ko Auk Po and Ma Mut two of the mortgagors.

9. MA SATHA PU ... Widow of the deceased Abdool Gaffoor one of the mortgagors.

10. ISMAIL. } Children of the deceased Abdool Gaffoor one of the mortgagors.

11. KHATIZA BI. } Gaffoor one of the mortgagors.

Legal representatives of the said deceased Maung Auk Po and Ma Mut residing at Kadoe, Moulmein.

Legal representatives of the deceased Abdool Gaffoor residing at 4th Division, Moulmein.

RESPONDENTS.

To

THE CHIEF JUDGE AND THE OTHER JUDGES

OF THE SAID COURT.

The Petition of Maung Tha Hnyin the applicant abovenamed.

RESPECTFULLY SHEWETH,

I. That when your petitioner filed the application Maung Tun Hla was the first respondent, on his own account and as the legal representative of Maung Auk Ta, who was one of the mortgagors, and was then residing in Siam,

2. That after the said application was filed the said Maung Tun Hla has died in Siam, leaving as his legal representatives him surviving, Ma Mya Su his widow residing at Kadoe, Maulmein, and Tun Win, a minor son, aged 7, living with his mother Ma Mya Su at Kadoe.

Your petitioner therefore prays that the said Ma Mya Su and Tun Win be added as parties on the record in the place of the said Maung Tun Hla deceased and that the said Ma Mya Su be appointed guardian *ad litem* for the said Tun Win.

10

And your petitioner will ever pray.

Rangoon, 5th September 1907.

A. AGABEG,
Advocate for Petitioner.

IN THE CHIEF COURT OF LOWER BURMA.

Affidavit in support of application,
No. 46.

APPELLATE JURISDICTION.

CIVIL MISCELLANEOUS No. 40 OF 1907.

MAUNG THA HNYIN PETITIONER.

VERSUS

MA MYA SU AND OTHERS ... RESPONDENTS.

AFFIDAVIT.

10 I, Ma Mya Su, daughter of the late Ko Hmwe, petty trader, residing at Kado, Moulmein Township, make oath and state as follows :—

1. That I was informed of the death of my husband Maung Tun Hla at a village near Chiengmai, Siam, in November 1905.
2. That I and Maung Tun Win, a minor son, aged 7, surviving him are his legal representatives.

Sworn before me this 3rd
day of October 1907.

MA MYA SU,
(in Burmese.)
Deponent,

20 J. H. ANDERSON,
Headquarters Magistrate, Moulmein,
A Commissioner for oaths, etc,

IN THE CHIEF COURT OF LOWER BURMA.

Affidavit in support of application,
No. 46.

APPELLATE JURISDICTION.

CIVIL MISCELLANEOUS No. 40 OF 1907.

MAUNG THA HNYIN PETITIONER.

VERSUS

MA MYA SU AND OTHERS RESPONDENTS.

AFFIDAVIT.

I, Maung U Baw, son of the petitioner abovenamed make oath and state as follows :— 10

1. That I manage my father's business and in particular I instruct advocates for him in his cases.
2. That neither my father nor I came to know of the death of the first respondent at Cheingmai in Siam before the notice from this Court in this case was returned unserved stating of his death in November 1905.
3. That pending the hearing of Civil Regular First Appeal No. 1 of 1906 filed by Ma Satha Pu and two others against the petitioner or before this case neither my father nor I heard of first respondent's death. 20
4. That only when Ma Mya Su stated in her affidavit that her husband died in November 1905, that my father and I came to know of first respondent's death.

Sworn before me at Moulmein,
this 14th day of November 1907.

MAUNG OO BAW,
Declarant.

J. H. ANDERSON,
Headquarters Magistrate, Moulmein, a Commissioner
for Oaths, &c.

IN THE CHIEF COURT OF LOWER BURMA.

Dated the 16th December 1907.

No. 47.
Order substituting
Ma Mya Su and Tun
Win as parties and
appointing Ma Mya
Su guardian of Tun
Win.

CIVIL MISCELLANEOUS APPLICATION No. 40 1907.

MAUNG THA HNYIN

VERSUS

MA MYA SU AND 11 OTHERS.

ORDER.

10 On the 10th May 1903 the applicant filed a suit in the District Court of Amherst against eleven persons one of whom was Maung Tun Hla.

On the 3rd October 1905 he obtained a mortgage decree against all the defendants for over Rs. 10,000. Three of the defendants (not including Tun Hla) appealed to this Court valuing the appeal at Rs. 7,500. On the 23rd April 1907 this Court reversed the decree of the District Court not only as against the appellants, but as against all the defendants in the suit.

20 On the 17th June 1907 the applicant presented this petition for a certificate to enable him to appeal to His Majesty in Council against this Court's decree. Maung Tun Hla's name was entered as a respondent. From an affidavit of Ma Mya Su who says she is a widow of Maung Tun Hla and that she and her minor son Tun Win are his legal representatives, it would appear that Maung Tun Hla died in Siam sometime in November 1905.

The applicant's son Maung U Baw who says he conducts his father's business deposes that he and his father only came to know of Maung Tun Hla's death when a notice to him issued by this Court in the present proceeding was returned unserved.

On the 5th September 1907, the applicant applied to substitute Ma Mya Su's and Maung Tun Win's names as respondents in place of Maung Tun Hla's on the ground that they were his legal representatives.

30 I think this application may be granted. Section 368 of the Code, and the limitation applicable to an application under that section do not apply to the case. It was the case of entering on the memorandum of appeal the name of a person who was already dead.

(92)

The application to make Ma Mya Su and Maung Tun Win party respondents to the proposed appeal was made within six months of this Court's decree.

I would grant the application.

C. E. FOX,

Chief Judge.

16-12-07.

I concur.

A. M. B. IRWIN,

Judge.

16-12-07

10

IN THE CHIEF COURT OF LOWER BURMA.

CIVIL MISCELLANEOUS APPLICATION No. 40 OF 1907.

No. 48.
Certificate granted
under Section 600,
C. P. C.

MAUNG THA HNYIN APPLICANT.

VERSUS

1. MA MYA SU, AND MAUNG TUN WIN, minor by his
guardian Ma Mya Su, legal representatives of Maung
Tun Hla, deceased. (2) MA LUT TAW. (3) MA U.
10 (4) MAUNG PO MYA. (5) MA HLA THA. (6)
MAUNG ON MAUNG. (7) MA THEIN ME. (8) MA
SA BE. (9) MA SATHA PU. (10) ISMAIL. (11)
KHATIZA BI RESPONDENTS.

Read application presented by Chit Hlaing.

Certified that the case is a fit case for appeal to His Majesty in Council,
and that as regards the amount, in dispute, it fulfils the requirements of Sec-
tion 596 of the Code of Civil Procedure.

Given under our hands and the seal of the Court this 17th day of December
1907.

A. M. B. IRWIN,

Judge.

C. E. FOX,

Chief Judge.

IN THE CHIEF COURT OF LOWER BURMA.

No. 49.
Order demanding
security and ex-
penses.

Dated the 17th December 1907.

CIVIL MISCELLANEOUS APPLICATION No. 40 OF 1907.

MAUNG THA HNYIN APPLICANT.

VERSUS

1. MA MYA SU, AND MAUNG TUN WIN, minor by his
guardian Ma Mya Su, legal representatives of Maung
Tun Hla, deceased. (2) MA LUT TAW. (3) MA U.
(4) MAUNG PO MYA. (5) MA HLA THA. (6) MG.
ON MAUNG. (7) MA THEIN ME. (8) MA SA BE.
(9) MA SATHA PU. (10) ISMAIL. (11) KHATIZA
BI RESPONDENTS.

A certificate having been granted, the applicant is required to give security for costs of the respondents in the sum of Rs. 4,000 within the time allowed by section 602 of the Civil Procedure Code, and also to deposit within the same time the sum of Rs. 1,000 to defray the expenses of transcribing, printing and transmitting to His Majesty in Council correct copies of the record.

A. M. B. IRWIN,
Judge.

C. E. FOX,
Chief Judge.

IN THE CHIEF COURT OF LOWER BURMA.

Dated the 27th January 1908.

CIVIL MISCELLANEOUS APPLICATION NO. 40 OF 1907.

MAUNG THA HNYIN APPLICANT.

VERSUS

I. MA MYA SU, AND MAUNG TUN WIN, minor by his
guardian Ma Mya Su, legal representatives of Maung
Tun Hla, deceased. (2) MA LUT TAW. (3) MA U.
(4) MAUNG PO MYA. (5) MA HLA THA. (6) MG.
ON MAUNG. (7) MA THEIN ME. (8) MA SA BE.
(9) MA SATHA PU. (10) ISMAIL. (11) KHATIZA
BI RESPONDENTS.

I hereby certify that the applicant has deposited the sum of Rs. 1,000 in cash for transcribing and printing the record and the sum of Rs. 4,000 in cash as security for respondents' costs in appeal to His Majesty in Council in the above cause on the 27th day of January 1908,

I. G. LLOYD,

Registrar.

No. 50.
Certificate of the
security and ex-
penses having been
deposited.

IN THE CHIEF COURT OF LOWER BURMA.

No. 51.
Order declaring the
appeal admitted.

Dated the 28th January 1908.

CIVIL MISCELLANEOUS APPLICATION No. 40 OF 1907.

MAUNG THA HNYIN APPLICANT.

VERSUS

I. MAUNG MYA SU, AND MAUNG TUN WIN, minor by
his guardian Ma Mya Su, legal representatives of Maung
Tun Hla, deceased. (2) MA LUT TAW. (3) MA U.
(4) MAUNG PO MYA. (5) MA HLA THA. (6) MG.
ON MAUNG. (7) MA THEIN ME. (8) MA SA BE.
(9) MA SATHA PU. (10) ISMAIL. (11) KHATIZA
BI RESPONDENTS.

10

The necessary security having been given, and the expenses for transcribing and printing the records having been deposited, we do hereby declare the appeal admitted.

Notice thereof to be given to the respondents and copies of the records to be transmitted to His Majesty in Council.

A. M. B. IRWIN,

Judge.

C. E. FOX,

Chief Judge. 20

APPENDIX I.

- A.** Record of Civil Regular No. 69 of 1895 of the Court of the Judge of Moulmein.
- B.** Record of Civil Regular No. 77 of 1901 of the District Court of Amherst.
- C.** Record of Civil Regular No. 196 of 1901 of the District Court of Amherst.
- D.** Record of Civil Regular No. 118 of 1902 of the District Court of Amherst.
- E.** Record of Civil Regular No. 159 of 1902 of the District Court of Amherst.

A.

Record of

The Court of the Judge of Moulmein.

Civil Regular No. 69 of 1895.

IN THE COURT OF THE JUDGE OF MOULMEIN.

No. 52.
Judgment in Civil
Regular No. 69 of
1895.

Dated the 29th July 1895.

REGULAR No. 69 OF 1895.

MAUNG SHWE AYE

VERSUS

MA DOOT HTAW.

FOR PLAINTIFF MR. SUTHERLAND.

FOR RESPONDENT MAUNG SHWE THWIN.

10

Judgment.

20

This is a suit to eject defendant from the house and ground described in the plaint and said to be occupied by defendant under leave and permission from plaintiff during his pleasure: it is therefore a suit to contest a right of occupancy and all questions of plaintiff's *title* to the premises are expressly excluded from consideration. It is admitted by both sides that the property in question belonged to defendant's parents by whom it was mortgaged to a certain Chetty who, it is said for plaintiff, parted with his rights to Eman Saib or to Abdool Rymon who, in turn, made some transfer to plaintiff and thereafter plaintiff says he informed defendant that he had purchased the property and she asked and obtained permission to live on it, do the necessary repair and give up possession when required.

30

Defendant denies these allegations as to the arrangement for occupation and also denies all knowledge of the alleged transfer to plaintiff and, although I hardly think she can have been quite ignorant of the dealings between the Chetty and Eman Saib and Abdool Rymon and plaintiff, I have no hesitation in rejecting the evidence on plaintiff's side as to the alleged arrangement under which defendant is said to have occupied the premises which she is now required to vacate. The avowed object of the suit is to turn defendant out of the premises and to have Ma Oo in occupation, therefore the interested evidence of Ma Oo is of no value as supporting plaintiff's statements of the arrangement relied upon against defendant's denial thereof: and the evidence of Taw Kalike is not, in my opinion, strong enough to carry plaintiff's case for he is related to plaintiff and seemed to me anxious to say as much as possible in his favour. But, at best, his evidence goes to show that plaintiff represented to defendant that he had purchased this property (of which fact we have no knowledge in

this case) and that defendant asked, *if that was so*, to be allowed to occupied it and agreed to do so upon the terms imposed by plaintiff so that, according to this witness, defendant's consent to the arrangement was *conditional* upon the very point which is avoided by plaintiff in this suit, *viz*: his *title* to the property upon the strength of which plaintiff should, I think, be left to succeed and should not be allowed to obtain *possession* of that property upon the unsatisfactory evidence now adduced. I therefore dismiss plaintiff's suit with costs.

D. G. MACLEOD,

Judge.

29-7-1895. 10

B.
Record of
The District Court of Amherst.
Civil Regular No. 77 of 1901.

IN THE DISTRICT COURT OF AMHERST.

No. 53.
Judgment in Civil
Regular No. 77 of
1901.

Dated the 31st December 1901.

REGULAR No. 77 OF 1901.

KO THA HNYIN

VERSUS

MAHOMED ADAM AND OTHERS.

FOR PLAINTIFF MAUNG SHWE YIN.

FOR RESPONDENT MR. ABDUL GUFFOOR.

10

Judgment.

Plaintiff Ko Tha Hnyin sued Iman Saib and his wife Ma The, Abdul Rahman their son and Mahomed Adam their son-in-law for moneys due on three promissory notes, Rs. 26,044-5-10; and pray for a decree (1) declaring that amount to be due, and (2) ordering the properties mortgaged to be sold in satisfaction and (3) the defendants directed to pay the balance with interest.

Plaintiff asked I may say less interest than he was entitled to, namely 1 per cent. from the date of filing the suit, 2 and $2\frac{1}{2}$ per cent. being the rates on the notes. I did not notice this in time to give plaintiff an opportunity of amending the plaint. It is a trifling matter.

20

The properties mortgaged fell into 4 categories. First, there were hammer mark certificates with the usual powers-of-attorney together with taingsas or documents of title to certain logs. Secondly, there was immovable property in respect of which all 4 defendants joined in executing and registering Exhibit 39 which may be described as an English mortgage, dated 1st October 1894. Thirdly, there was jewelry, placed in pawn. (So the plaintiff said, defendants alleging it was not pawned but given to the plaintiff for safe custody). Fourthly, there were documents of title to other immovable property, deposited as additional security by way of equitable mortgage.

30

The first matter to be disposed of is one on which I did not frame an issue. It seemed to be hoped (and feared) that Section 44, Civil Procedure Code, would render it needful for the plaintiff to proceed separately against the movable and the immovable property. His advocate distinguished between suing on the document Exhibit 39 and putting it in evidence. The true distinction is this, that this is a suit for a *debt*, with an alternative prayer for the sale of movable

and immovable property : whereas Rule (a) Section 44, Civil Procedure Code, applies to suits for the recovery of immovable property or to obtain a declaration of title to it. It is needless to do more than refer to the decided cases (Indian Law Report 10 Mad. 375, 506, and Indian Law Report 14 Mad. 284) Sections 43, 44 and 45, Civil Procedure Code must all be read together.

The promissory note Exhibit 1 for Rs. 16,327-7-0 was admittedly executed by 1st, 2nd and 3rd defendants. As to the other smaller promissory notes sued upon, though not signed by all three, there was no dispute. All three admitted liability. But as to this one the defendants alleged that there was a fraudulent alteration. They said that the stipulation for interest was fraudulently added after they signed it, and whether that was done was the issue which it may be most convenient to discuss next (2nd issue). 10

The burden of proof was on defendants.

Second defendant Iman Saib himself said the clause about interest was left blank and that plaintiff Ko Tha Hnyin said he would not take interest. He admitted that Ko Tha Hnyin with whom he had had dealings for years always charged interest and that all other promissory notes made at settlements between them bore interests.

(i) Mutia Rahman a timber trader, (ii) Mahomed Wali, a timber broker, (iii) Karam Ali, a particularly *glib* man who declared plaintiff's son consulted him about the filing of this suit, and (iv) Basamia, a timber-yard chowkidar, all 4 Chittagonians were the witnesses that defendants called to corroborate their very unlikely allegation. 20

Now first of all be it remarked that when a note with a clause providing for interest is signed with that part not filled up, it would not amount to a fraudulent alteration for the payee to fill in there a figure to show the rate, when there had been many previous settlements of accounts between the maker and the payee of the note, each ending with a note bearing interest. The signing of the note blank as to the interest clause would amount to authority to fill in the usual rate. So even if there seemed to be some truth in the defendant's allegations as to the note being signed with that clause blank, it would not follow that there was a fraudulent alteration. 30

I need not go further into this matter however, for I have no hesitation in believing plaintiff and his son and clerk who say that there was no talk about interest and that Exhibit I was filled up before it was signed, and read over also before being signed.

There are some contradictions in the depositions of the witnesses for the defendants about this promissory note. I lay no great stress on these. But all 4 witnesses for the defence made a most unfavourable impression and Karam Ali's story unlikely in itself was disproved by the blunders he made when (more daring than the others) he ventured into details. He said the figures in the left hand corner of Exhibit I were English whereas they were Burmese. He said he read 1st defendant Mahomed Adam's signature. It was in Indian 40

characters, so he could read it but not write it. As a matter of fact it was in Burmese.

It is perhaps sufficient to add that it is very unlikely indeed, if one may judge from the ordinary course of business, that when so big a note was signed the rate of interest was left blank. Ismail Saib himself had to admit it would have been unique in his experience of dealings with Ko Tha Hnyin.

So I have no hesitation in holding that Exhibit I has not been altered.

This fixes the amount of the debt due at Rs. 26,044·5-10 with additional interest as prayed since the date of suit till now at 1 per cent. per mensem.

10 Turning to the first category of securities we find no dispute as to the 12 hammer marks plaintiff says he holds with the usual powers-of-attorney: nor yet as to the timber obtained by means of them. But defendants insisted that they had given another power-of-attorney in respect of another hammer mark, and the 6th issue was framed accordingly.

Was there also a hammer mark certificate မြိတ်ခုံ hme-le-on deposited by defendants with plaintiff, and if there was, what should be allowed if plaintiff has lost it?

20 The burden of proof was on defendants. There was not a little of evidence to show a single log ever came to Kado bearing such a mark. There was no evidence from the Kado or any other Forest office to show any such hammer mark ever existed,—in fact there was really no evidence adduced to show it ever existed, and no reason was suggested for supposing that the plaintiff had in any way concealed any hammer mark.

So this issue must be decided in the plaintiff's favour.

The 1st, 3rd and 4th issues may conveniently be discussed together, as the decision of all three may be based on the same finding as to the facts.

Exhibit 39 is the registered deed described already as an English mortgage, and admittedly executed by all four defendants. It is dated 1894, and the 1st issue is whether it is still in force.

30 Admittedly no deed has been executed by plaintiff the mortgagee retransferring to his mortgagors, defendants, the properties to which it relates.

The defendants' case is that in September 1895 there was a settlement of accounts between them, as the final upshot of which their debt to the plaintiff was reduced to Rs. 1,429. They say that they then received back from plaintiff Exhibit 39, the English mortgage,—as well as a large quantity of jewelry deposited by way of pledge, and many title deeds of immovable property, deposited by way of equitable mortgage.

40 Subsequently, about 2 years ago, Ma The, the 4th defendant in the absence of the others took back Exhibit 39, and with it the jewels and the title deeds previously deposited by way of equitable mortgage. She gave them to plaintiff for safe keeping, not by way of security at all,

Thus the 3rd and 4th issues came to be framed.

Whether the movable property held by the plaintiff is held by him in pawn or merely for safe custody?

Ditto the title deeds.?

Plaintiff on his part denies utterly that Exhibit 39 or the jewels or other title deeds deposited with him as equitable mortgage ever left his possession..

It is not worth while to discuss what would be the defendants' remedy or the rights of the parties if the plaintiff had returned to them, the English mortgage Exhibit 39 in his favour without executing a retransfer. The return of the jewels would of course terminate the pledge of them and to hand back title deeds held by way of equitable mortgage is to terminate that mortgage. But all three issues must be decided in the plaintiff's favour for the single reason that the story told by the defendants and the witnesses they call is utterly unworthy of credit, while the allegation of the plaintiff is so likely in itself, so much in harmony with all the undisputed facts, and supported by evidence he calls and admissions defendants had to make, that I have no hesitation in holding that the plaintiff's case is proved to be true, that is, that Exhibit 39 is still in force, and that the jewels of defendants which plaintiff holds were held in pawn and that the title deeds to immovable property other than that comprised in Exhibit 39 were held by way of equitable mortgage.

The following statement of reasons may suffice.

The fact that the alleged return of Exhibit 39 in 1895 was not accompanied by any document tells against the defendants' story that it and the jewels and title deeds were then returned. It is doubtful whether 4th defendant Ma The could be so ignorant as to suppose the mere handing back of Exhibit 39 would terminate the mortgage it created. It is quite certain that the 1st, 2nd and 3rd defendants could not have for a minute supposed it did. If then what they say is true, that in 1895 Ko Tha Hnyin the plaintiff relinquished all other securities but the hammer marks, why then did they not obtain a formal retransfer?

The plaintiff and his son and 2 clerks appeared in Court with all their accounts, ready for cross-examination upon them. There was practically none. Exhibit 67 was part of the 1895 settlement. It showed a balance in favour of 3rd defendant Abdul Rahman of Rs. 8,833 carried to 2nd defendant Iman Saib's account. Both sides agreed that 1st, 2nd and 3rd defendants settled jointly with plaintiff at all times, though for convenience separate accounts were kept. Both sides agreed that on this occasion the net result of the settlement was a balance in plaintiff Ko Tha Hnyin's favour of Rs. 1,429. Maung Po Sin then his clerk (iv witness) explained that "either on the very day of the settlement or a day or two after it the defendants took further advances, and they never at all took away Exhibit 39 or any other of the securities."

Now I think we must believe that statement about further advances "either on the very day of the settlement or a day or two after it." The de-

10 defendants did not deny it. The witness produced his accounts and was not cross-examined upon it. Exhibit 68 the account of the final 1898 settlement goes a long way to support it, for on 4th September 1896 we find the 1st, 2nd and 3rd defendants owing Rs. 10,500 then on a promissory note, while further large advances were taken a month or two later. Then again 2nd defendant Iman Saib had to admit in the witness box. "I cannot from memory say that I ever was in a position to sever my connection with Maung Tha Hnyin since I began to borrow from him," as for his son-in-law and son 1st and 3rd defendants they did not face cross-examination at all and never entered the witness box.

Add to all this that the large balance against defendants at the 1898 settlement is not disputed, and it seems impossible to refuse to accept the statements of plaintiff to the effect that defendants were continually increasing the balance against them, obtaining larger advances and giving him more and more security. If that is indeed true, it must be inferred that their story about getting their securities returned in 1895 is a very unlikely one.

20 Here I may note that Ko Tha Hnyin is one of the most respectable Burman bankers in the country, and that though he has often given evidence in this Court in which his interests were strongly concerned, I have never at any time had occasion to notice any wilful inaccuracy in any statement he made. I consider his word of great value, especially in matters of business.

The defendants on the other hand would not be in the least offended to hear it said that their evidence would always require a great deal of corroboration. This might almost be called too obvious to need to be said.

What then is the evidence to show whether in 1895 all the securities (except the hammer mark certificates and documents concerning these) were returned by plaintiff to the defendants?

30 On the plaintiff's side we have himself and son and clerk vehemently denying the story: and all three of them seem credible.

The story is, as we have seen, in itself a most unlikely one.

The witnesses to support the defendants' story are these. Iman Saib 2nd defendant and Ma The his wife 4th defendant say that at the 1895 settlement Exhibit 39 and the jewels and title deeds were returned. Iman Saib said he took them home (sheet 2) while Ma The (cross-examination) said it was 3rd defendant their son Abdul Rahman who did so.

40 There are no other witnesses to the return of these things. The alleged deposit for safe custody is stated by Ma The 4th defendant and to corroborate her story Ma Sibi her sister, Hamed Bi, daughter of 2nd and 4th defendants and wife of 1st defendant were called. A boat man Abdul Ali was also called but could say so little that he was of no account. Practically therefore the defendants' story rest solely on the allegations of themselves and the females of their family. Under these circumstances it is hardly needful to mention such discrepancies as these. Ma Sibi said they "left Ko Tha Hmyin's soon after

handing over these things," while Hamed Bi said they stayed from about 9 A. M. till afternoon. Ma The, 4th defendant said Ko Tha Hnyin took the things into his room, while both Ma Sibi and Hamed Bi declared he did not move. It may be as well to point out that Ma The herself had to admit that she never went and demanded the return of the articles " deposited for safe custody."

If we apply the criterion mentioned in 1 Moores Indian Appeals, page 19, and having regard to the facts beyond dispute, consider which of the two cases best accords with them, according to the ordinary course of affairs, then there can be no question that the case put forward by the plaintiff must be accepted, and the unlikely story, told for the defendants, supported by interested witnesses that do not agree with each other, rejected entirely.

It only remains to consider to what relief plaintiff is entitled.

Exhibit 39 is an English mortgage. The defendants admittedly never repaid either interest or principal; and it was retained and the conduct of all parties clearly shows all intended that it was to be retained by the plaintiff as collateral security for the balance owing to him.

Ma The who signed it did not incur any further liability on the promissory notes, none of which she signed but of course it must be held that the title deeds and jewels deposited were deposited with her authority. Her " right, title and interest " in the property mortgaged may therefore be sold, but she is not liable for any balance still remaining unsatisfied.

Let the Registrar take an account and declare in Court on or before 8th January 1902 what is due on Exhibits 1, 41 and 42 allowing as prayed 1 per cent. per mensem interest after date of suit till to-day (see paras 1, 2 and 14.) Let him tax costs and declare on 8th January 1902 what is due for principal interest and costs.

Let the logs for which plaintiff holds taingsas, and all the other movable property pawned to him be sold at once in the usual manner, unless before the day fixed for the sale, the defendants do pay into Court the amount due as certified aforesaid.

Let the Registrar then declare as soon as possible and at latest within two months what remains due, after paying to the plaintiff the net proceeds of the timber and other movable property.

Let a Receiver be appointed to receive and sell all timber which the hammer marks and powers-of-attorney held by the plaintiff enable him to seize on behalf of the defendants or any of them, and let the net proceeds of such sales be certified from time to time and paid to the plaintiff, and the net balance remaining unpaid and due from the defendants to the plaintiff be duly certified from time to time by the Registrar.

Interest is allowed after 8th January 1902 at 6 per cent, per annum on the total payable including all costs.

This interest shall be included as often as a balance is stated.

10 If at any time before 10th July 1902 the defendants do pay into Court what is due and payable to the plaintiff under this decree including the interest allowed and costs, it is ordered that the plaintiff do then deliver up to the defendants or to such person as they appoint all movable property not sold, and all documents in his possession or power relating to immovable property affected by this suit, and that the plaintiff do execute a reassignment of the land affected by the registered mortgage Exhibit 39, the costs thereof to be paid by the defendants and the reassignment to reconvey the mortgaged premises free and clear of all incumbrances done by plaintiff or by any claiming through him.

Upon this reconvey being made and the documents and the movables if any delivered up, the Registrar shall pay out to the plaintiff the money paid into Court by defendants in satisfaction of the decree.

In default of defendants so paying into Court what is due, as aforesaid, before Thursday 10th July 1902, then it is ordered that the mortgaged premises be sold in lots subject to the approbation of the Registrar.

20 And it is ordered that the net proceeds of such sales be paid into Court, and then applied towards payment to plaintiff of all that is due him, and the balance if any, shall be paid to the defendants or other person entitled to receive the same; and if the proceeds of all the sales falls short of what is due to the plaintiff it is ordered that 1st, 2nd and 3rd defendants do pay the balance remaining due, with interest up to the date of payment.

DAVID WILSON,

Judge.

31-12-01.

C.

Record of

The District Court of Amherst.

Civil Regular No. 196 of 1901.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 54.
Plaint.

CIVIL REGULAR No. 196 OF 1901.

RAMASAWMY CHETTY of Devakota LUTCHMONEN
CHETTY of Devakota, APPOOKOOTTA CHETTY
of Ariyalum, all in Madurai Zilla, carrying on business
in Moulmein as money lenders, under the style and
firm of A. S. A. L. by their Agent A. S. A. A. L.
ADIGAPPA CHETTY PLAINTIFFS.

AGAINST

EMAM SAIB, trader of Kado, WALLI ABDUL RYMAN,
son of the 1st defendant, residing at Kado DEFENDANTS.

The plaintiffs abovenamed state as follows :—

1. That on the 26th day of May 1898 at Moulmein the defendants by their promissory note now overdue promised to pay to the order of plaintiffs the sum of Rs. 6,250 together with interest at the rate of $1\frac{1}{2}$ per cent. per mensem on demand.

2. That as security for the payment of the said principal sum and interest that might become due on the said promissory note the defendants deposited with plaintiffs the title deeds of immovable property in the 5th Division of Moulmein covered by and morefully described in :—

(a) Freehold Grant No. 2320, dated 9th day of May 1865 and Registered Deeds Nos. 170 for 1870 ; 420 for 1876 ; 57 for 1888 and 116 for 1888, bounded on the North by Broadfools Road and measuring on that side 50 feet ; on the South by Lot No. 721 and measuring on that side 52 feet ; on the East by Pagoda Street and measuring on that side 40 feet and on the West by Lot No. 719 and measuring on that side 40 feet.

(b) A piece of land with all buildings and erections thereon as described in the sketch plan attached to a Deed of Sale, dated 12th August 1884, showing the portion marked B of Leasehold Grant No. 5025, dated the 16th September 1851, situated at 5th Division of the Town of Moulmein (*vide* also Registered Bill of Sale No. 448, dated 31st October 1883) bounded on the North by Government ground and Mission Road and measur-

ing on that side 31 feet ; South by Ko Law's ground and measuring on that side 32 feet ; East by Boodagazee's ground and measuring on that side 50 feet and on the West by Ma Boo's ground and measuring on that side 41 feet attached hereto and in the other documents of title relating thereto and filed herewith.

3. That there is now due from the defendants to the plaintiffs the sum of Rs. 4,861-6-0.

					Rs.	A.	P.
Principal	...	...	...	...	6,250	0	0
Received to Account of Principal	...	...	...	...	4,166	10	0
					2,083	6	0
Interest	...	...	...	...	2,778	0	0
			Total	...	4,861	6	0

4. That the defendants have not paid the same except Rs. 4,166-10-0 to account of Principal.

The plaintiffs pray :—

- (a) That the Court will order the defendants to pay them the said sum of Rs. 4,861-6-0 with such further interest as may accrue between the filing of the plaint and the day of realization and also the costs of this suit on some day to be fixed by the Court and in default.
- (b) That the said premises may be sold and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs.
- (c) That if such proceeds shall not be sufficient for the payment in full of such amount, the defendants do pay to the plaintiffs the amount of the deficiency with interest thereon at the rate of 12 per cent. per annum until realization.
- (d) That for the above purposes all proper directions may be given and accounts taken by the Court.

ADIGAPPA CHETTY

(in Tamil.)

A. J. DARWOOD,

Plaintiffs' Advocate.

Moulmein, 7th December 1901.

I, Adigappa Chetty, agent of the plaintiffs abovenamed do declare that what is stated in the above plaint is true to the best of my knowledge except as to matters stated on information and belief and which I believe to be true,

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 55.
Written Statement

CIVIL REGULAR No. 196 OF 1901.

RAMASAWMY CHETTY and others PLAINTIFFS.

VERSUS

EMAM SAIB and one DEFENDANTS.

The defendants state as follows :—

1. The defendants admit execution of promissory note.
2. As security the defendants pawned with the plaintiff three diamond rings, title deeds of two houses and hammer mark certificates of 26 marks.
3. That subsequently the plaintiff advertised to sell the three rings by public auction. Defendants asked him not to sell them by auction, but by private sale at a price of Rs. 3,800.
4. The plaintiff accepted defendants' proposal provided they the defendants make good the deficiency (if any).
5. The defendants agreed to his terms and deposited a pair of diamond nagats valued Rs. 800 with him to meet the deficit.
6. That this arrangement was reduced to writing and signed by the parties and it is with plaintiff at present.
7. The defendants do not know whether the plaintiff has sold their three rings. Neither any notice given to them nor any accounts submitted for their scrutiny.
8. About a month ago it was agreed that defendants should pay Rs. 3,250 to plaintiff and that he should accept the same in full satisfaction of his claim as a compromise and return defendants their securities.
9. Three or four days after the compromise the defendants offered to pay plaintiff the said sum of Rs. 3,250, which he refused and filed this suit.

10. The defendants contend that plaintiff has no right of suit on the promissory note but on the compromise.

EMAM SAIB

(in native character.)

EMAM SAIB

(in native character.)

for 2nd defendant.

A. GAFFOOR,

Defendants' advocate.

We the defendants abovenamed do hereby declare that what is stated in the above is true to the best of our knowledge except as to matters stated on information and belief which we believe to be true.

10

EMAM SAIB

(in native character.)

EMAM SAIB

(in native character.)

for 2nd defendant.

Moulmein, 16th December 1901.

(TRANSLATION.)

Exhibit I.

No. 56.
Exhibit I.

—
A. S. A. L.

Rs. 6,250.

Moulmein, 26th May 1898.

10 On demand we the undersigned Narasapore Cara (or residents of Cocoa-
nada) viz: Emam Saib and his son Abdool Rhyman living at Kado owe
Rs. 6,250 to Nattoo Kottai A. S. A. L. Ramasami Chettiyar for money borrowed
through cheque granted. These Rupees six thousand two hundred and fifty
we jointly and severally promise to pay on demand to A. S. A. L. Ramasami
Chettiyar or to his order with interest at Rs. $1\frac{1}{2}$ per cent. per mensem.
Agreeing to pay we sign hereunder.

(Sd.) EMAM SAIB.

26th May 1898.

(Sd.) WALLI ABDOOL RHYMAN.

Took Rupees six thousand two hundred and fifty—interest at Rs. $1\frac{1}{2}$ per
cent. per mensm.

(ENDORSEMENT).

Written in English and

20

(Sd.) EMAM SAIB.

(Sd.) WALLI ABDOOL RHYMAN.

(Translated by)

V. VENKATASWAMY NAIDU,

~ Interpreter.

Fees Re. 1.

5th December 1891.

No. 57.
Judgment.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

REGULAR No. 196 OF 1901.

RAMASAWMY CHETTY and others.

VERSUS

EMAM SAIB and one.

BEFORE D. WILSON, ESQUIRE, DISTRICT JUDGE OF THE COURT.

16th December 1901.

First defendant personally served, summons on 2nd defendant accepted by 10
1st defendant who is his father.

JOHN BELL,

Officiating Registrar.

17th December 1901.

A. Guffoor for defendants admits execution of Exhibit 1 and deposit of the other documents.

Mr. Darwood for plaintiffs says they are willing to accept still Rs. 3,250 in full satisfaction but ask all their costs. They deny that the defendants ever tendered the Rs. 3,250.

Both advocates agree the only question in dispute is whether defendants 20
should pay costs.

Plaintiffs say notice of suit was sent. Mr. A. Guffoor says the notice was originally served for the full claim Rs. 5,000 and odds. After that, the alleged compromise was made, and after that no notice was sent before this suit was filed.

Mr. Darwood. "That is so."

D. WILSON,

Judge.

Mr. Darwood says he is instructed to ask a decree payable immediately.

After consulting his client he agrees to take a simple money decree.

Mr. A. Guffoor agrees but asks a month's time. Both sides in reply to the Court say " Our compromise was that Rs. 3,250 was to be paid at once within a few days."

That was according to the written statement " a month ago."

No notice was sent of this suit, and to that extent plaintiff was in fault.

On the other hand the money has not even yet been paid into Court, and to that extent defendant is in fault.

10

Judgment.

By consent of parties I give decree for Rs. 3,250. It is an ordinary money decree.

Under the circumstances I must hold that no sufficient cause is shown for allowing any time.

As to costs, let costs be calculated as they would stand in ordinary course, that is, plaintiff succeeding as to Rs. 3,250 and failing as to the rest, and of such proportionate costs let plaintiff receive two-thirds.

20 Plaintiffs recover costs because no money has been paid into Court by defendants. Plaintiffs do not get full costs because no notice was given of this suit.

D. WILSON,

Judge.

17th December 1901.

No. 58.
Decree.

DECREE.
IN THE COURT OF THE DISTRICT JUDGE,
AMHERST, AT MOULMEIN.

SUIT No. 196 OF 1901.

1. RAMASAWMY CHETTY of Devakota. 2. LUTCHMANEN
CHETTY of Davakota. 3. APPOOKOTA CHETTY
of Ariyalum, all of Madura Zilla, trading as A. S. A. L. in
Moulmein by their agent A. S. A. A. L. ADIGAPPA
CHETTY PLAINIFFS.

AGAINST

1. EMAM SAIB, Trader. 2. WALLI ABDUL RAHMAN, 1st
defendant's son, both of Kado DEFENDANTS.

Claim for Rs. 4,861-6-0 on a promissory note and for sale of the property mortgaged for the said debt *viz* :—

- (i) A piece of land with all buildings and erections thereon situated in the 5th Division of the Town of Moulmein and covered by and morefully described in Freehold Grant No. 2320, dated 9th day of May 1865.
- (ii) A portion of land with all buildings and erections thereon situated in the 5th Division of the Town of Moulmein as described in the sketch plan attached to the Deed of Sale No. 291, dated 12th August 1884 showing the portion marked B of Leasehold Grant No. 5025, dated 16th September 1851.

This cause coming on on the 17th day of December 1901 for final disposal before David Wilson, Esq., District Judge of Amherst, in the presence of Mr. A. J. Darwood, advocate on the part of plaintiffs, and of Mr. Abdul Guffoor, advocate on the part of the defendants, it is ordered and decreed that defendants do pay to plaintiffs the sum of Rs. 3,250 (Rupees three thousand two hundred and fifty) and that the sum of Rs. 155-10-0 (Rupees one hundred and fifty-six and annas ten) be paid by defendants to plaintiffs on account of the two-third of the proportionate costs of this suit.

Given under my hand and the seal of this Court this 17th day of December 1901.

D. WILSON,
District Judge.

Signed on 19th December 1901.

NOTICE.

The parties in the abovementioned suit are hereby required to take back into their own keeping all exhibits filed by them respectively for the purpose of the said suit and now in the custody of the Court as soon as the decree or order therein shall have become final.

Cost of Suit.

Plaintiff.		Amount.			Defendants.		Amount.			
		Rs.	A.	P.			Rs.	A.	P.	
10	* Stamp for plaint	....	270	0	0	Stamp for power....	0	8	0	
	Stamp for petition	....	0	8	0	Pleader's fee	† 121	8	0	
	Stamp for affidavit	....	1	0	0					
	† Pleader's fees on									
	Rs. 4,860-6-0	...	121	8	0					
	Translation fee	....	1	0	0					
	Service of process	....	2	0	0					
	Total	...	396	0	0	Total		122	0	0

* Allowed Rs. 190. | † Allowed Rs. 81-4-0. | ‡ Allowed Rs. 40-4-0.

20

		Rs.	AS.	P.
N. B.—Costs awarded to plaintiffs	....	275	12	0
Costs awarded to defendants	...	40	12	0
Proportionate costs	....	235	0	0

Two-third of the proportionate costs allowed to plaintiffs Rs. 156-10-0 (Rupees one hundred and fifty-six and annas ten).

JOHN BELL,
Officiating Registrar.

D.

Record of

The District Court of Amherst.

Civil Regular No. 118 of 1902.

IN THE COURT OF THE DISTRICT JUDGE, AMHERST.

CIVIL REGULAR SUIT NO. 118 OF 1902.

No. 59.
Plaint.

M. ABDUL GUFFOOR, trader of 4th Division, Moulmein....PLAINTIFF.

VERSUS

(1.) EMAN SAIB, Broker. }
(2.) ABDUL RYMAN, Trader. } Residing at Kado? DEFENDANTS.

The abovenamed plaintiff states as follows :--

10 1. That on the 14th March 1895 the defendants mortgaged the properties named and particularized in the registered mortgage bond hereto annexed and marked I as security for the sum of Rs. 6,000 subject to redemption upon payment of the said principal by the defendants on the 14th March 1897.

2. There is now due from the defendants to the plaintiff the sum of Rs. 6,000 due on the said mortgage.

The plaintiff prays.

20 (a) That the Court will order the defendants to pay plaintiff the sum of Rs. 6,000 with such interest as may accrue between the filing of the plaint and the day of payment and also the costs of suit on some day to be fixed by the Court and in default.

(b) That the right to redeem the said mortgaged premises may be foreclosed and the plaintiff declared the owner. And for that purpose all proper directions may be given by the Court.

30 A. GUFFOOR,
Plaintiff's Advocate.

M. ABDOOL GUFFOOR,
Plaintiff.

I, the plaintiff abovenamed, do declare that what is stated above is true to the best of my (information) knowledge except as to matters on information and belief and which I believe to be true.

Moulmein, 5th July 1902.

M. ABDOOL GUFFOOR,
Plaintiff.

Exhibit I.No. 60.
Exhibit I.

This Indenture made the 14th day of March 1895 between Eman Saib, a broker of Kadoe and **Abdul Rymon**, a trader also of Kadoe hereinafter called the **Mortgagors** of the **one part** and **M. Abdul Guffoor** son of Mahomed Cassim, a resident of 4th Division, Moulmein, hereinafter called the **mortgagee** of the **other part**: **Whereas** the said mortgagee hath agreed to lend to the said mortgagors the sum of Rs. 6,000 six thousand on having the re-payment thereof secured to him in the manner hereinafter expressed. Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of Rupees 6,000 six thousand paid to the said mortgagors by the said mortgagee before the execution of these presents (the receipt whereof the said mortgagors do hereby acknowledge) they the said **mortgagors** do and each of them doth hereby respectively grant, transfer and assign unto the said **mortgagor** his heirs, executors, administrators and assigns :—

10

Firstly.—All that piece or parcel of land situated in the 5th Division of the Town of Moulmein, covered by and morefully described in Freehold Grant No. 2320, dated the 9th day of May 1865 together with all buildings and erections thereon.

Secondly.—All that piece or parcel of land situated in the 5th Division of the Town of Moulmein, covered by and morefully described in Freehold Grant No. 2541, dated the 27th day of August 1885 together with all buildings and erections thereon.

20

Thirdly.—All that piece of land situated in Mission Road, Shanzoo Quarter, Dinewoonquin, 5th Division of Moulmein, covered by the portion marked " B " of Leasehold Grant No. 5025, dated 16th September 1851 as described in the conveyance, dated 12th August 1884, executed by Co Shway Gywe in favour of Maung Oh.

Fourthly.—A house and ground situated at Kadoe bounded on the North by a road, South by a road, East by Ko Kay's land and West by Kadoe Creek.

30

Fifthly.—A piece of garden land situated at Kawtoon bounded on the North by a Creek, on the South by Ko Htaw's land and on the West by Nga Shwe Thee's land containing an area of acres 14.69.

Sixthly.—A piece of garden land situated in Kadoe Circle, covered by Pottah Grant No. 6 of the year 1244 bounded on the North by Maung Moot's land, South by Maung Auk Hta's land, East by Ko Wine's land, and West by a road.

40

Seventhly.—A piece of garden land situated in Kadoe Circle, covered by Pottah Grant No. 5 of the year 1244 bounded on the North by Maung Htoon Hla's land, South by Maung Mhoe's land, East by Ko Wine's land, and West by a road.

To have and to hold the hereditaments and premises hereby respectively granted and assigned or expressed so to be unto and to the use of the said mortgagee his heirs, executors, administrators and assigns subject to the proviso for redemption hereinafter contained. **Provided always** and it is hereby agreed and declared that if the said mortgagors their heirs, executors, administrators or assigns shall on the 14th day of March 1897 pay to the said mortgagee, his executors, administrators or assigns the sum of Rupees 6,000 six thousand, then and in such case the said mortgagee, his heirs, executors, administrators or assigns shall upon the request and at the cost of the said mortgagors, their heirs, executors, administrators or assigns, reconvey and reassign the hereditaments and premises hereby respectively granted and assigned or expressed so to be unto and to the use of the said mortgagors, their executors, administrators and assigns or as they shall direct. **And the said** mortgagors do hereby for themselves their heirs, executors and administrators covenant with the said mortgagor his executors, administrators and assigns that they the said mortgagors their heirs, executors, administrators or assigns will on the 14th day of March 1897 pay unto the said mortgagee his executors, administrators and assigns the sum of Rupees 6,000 six thousand. **And that** until payment of such sum, the said mortgagee, his heirs, executors, administrators and assigns shall be at liberty to enter into and upon the said hereditaments and premises and shall thenceforth quietly possess and enjoy the same and receive the rents and profits thereof without any lawful eviction, interruption, claim or demand from or by any person or persons whomsoever. **And that** free from incumbrances,

In witness whereof the said parties to these presents have hereunto set their hands at Moulmein the day and year first before written.

In presence of

ABRAHIM YUSOOF.

Signed in native character.

Signed in native character.

M. ABDOOL GUFFOOR.

30

Presented for registration at noon on the 14th March 1895 in the office of the Registrar, Registration Office by M. Abdul Guffoor son of Mahomed Cassim, trader, 4th division.

M. ABDUL GUFOOR.

TUN LWIN,
for Registrar.

14th March 1895.

Execution was admitted by Emam Saib, son of Barra Saib and his son Abdul Rymon and by the said M. Abdul Guffoor.

40

M. ABDUL GUFOOR.

EMAM SAIB.

ABDUL RYMON.

(In native characters.)

Identified by Abraham Yusoof, son of Mahomed Usoof, clerk to C. W. Law.

ABRAHIM YUSOOF.

The said Emam Saib and Abdool Rymon admitted receipt of commission as stated in the document.

EMAM SAIB.

TUN LWIN,

ABDOOL RYMON.

for Registrar.

(In native characters.)

Exhibit 2.

No. 61.
Exhibit 2.

Holding No. 29.

Adbool Raman, owner.

Garden land, acres, decimal.

II 25.04.

Twenty-five acres zero decimal.

N
|
S

No. 500.

Zweya Kyun.

Kawtun circle.

Kyeikthanlwin township.

Amherst district.

Scale: 16 inches = 1 mile.

For the year 1900-1901.

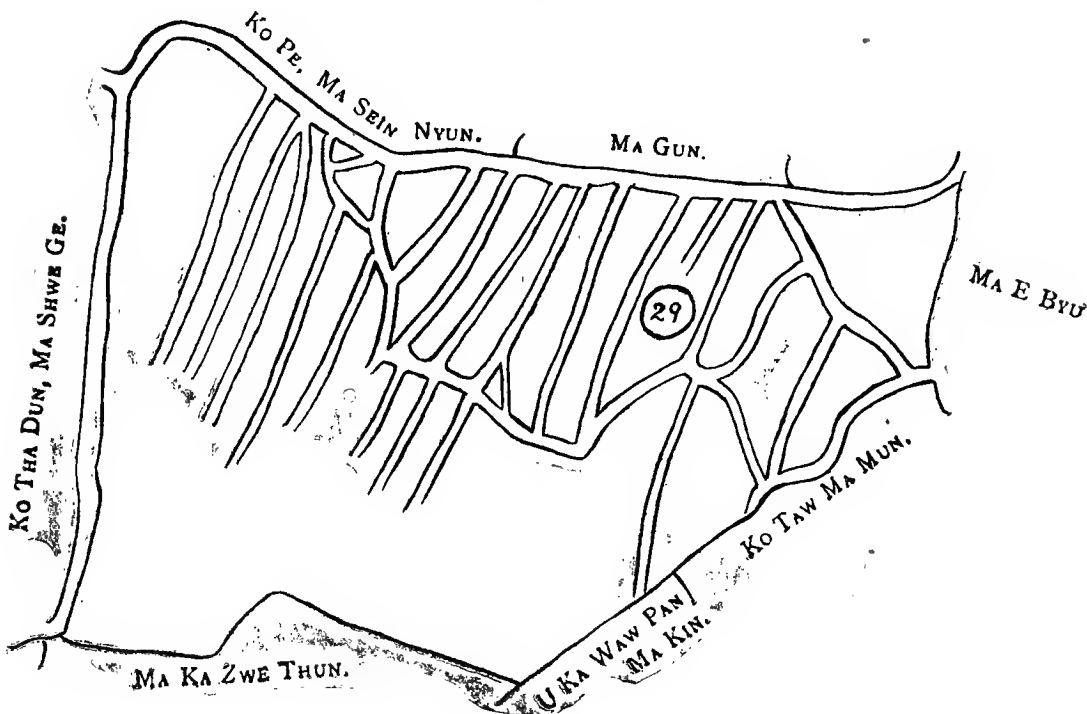


Exhibit 2.

Reg. 118—2.

M. Abdul Guffoor

vs.

Emam Saib & 1.

Admitted in evidence.

21-7-02. (Sd.) G. F. ARNOLD.

Applicant Abdool Guffoor.

Date of application 1-7-1902.

Copy made 1-7-1902.

Date of delivery 1-7-1902.

Certified that the map is a true and accurate copy of the supplementary survey map of the year 1900-01 ; and that the extracts from the registers have been correctly copied.

$\frac{1}{2}$ R. Court-fee.

(Sd.) D. W. DOBSON,

Supdt. of Land Records,

Amherst District.

Exhibit 3.

Holding No. 33.
 Nga Auk Po, owner.
 Garden land, acres, decimal.
 III '29
 (No acre, decimal twenty-nine).

No. 488.
 Petaw kwin.
 Kado circle.
 Moulmein town.
 Amherst district.
 Scale : 16 inches = 1 mile.
 For the year 1900-1901.

No. 62.
 Exhibit 3.

Path.	Kenot.	
	660	33
	1,715	
	Maung Lan.	
	House-ground.	

10

Exhibit 3.

Reg. 118—2.

Abdul Guffoor *vs.* Eman Saib and 1.

Applicant Abdul Guffoor.

Date of application....7-7-1902.

Admitted in evidence.

Copy made 7-7-1902.

21-7-02. (Sd.) G. F. ARNOLD.

Date of delivery 7-7-1902.

Certified that the map is a true and accurate copy of the supplementary survey map of the year 1900-1901 and that the extracts from the registers have been correctly copied.

(Sd.) D. W. DOBSON,

20

Supdt. of Land Records,

Amherst District.

Exhibit 4.

No. 63.
Exhibit 4.

Ko Auk Po, owner of land.
House site, acres, decimal.
 ·08
Decimal zero eight.

No. 492.
Kado kwin.
Kado circle.
Moulmein town.
Amherst district.
Scale: 32 inches = 1 mile.
For 1901-1902.

Kado river.

261	Maung Shwe Le.
	Road.

Applicant Abdul Guffoor.
Date of application 7-7-1902.
Date of delivery 7-7-1902.
Copy applied for to be produced
in evidence.

10

Certified that the map is a true
and accurate copy of the supplementary
survey map of the year 1901-1902, and
that the area is correctly copied from
the area statement.

Exhibit 4.

True copy.

Reg. 118—2.

(Sd.) MAUNG PO GYI,

M. A. Guffoor *vs.* Emam Saib and 1.

Kado Taiksaye.

20

Admitted in evidence.

7-7-1902.

21-7-1902.

(Sd.) G. F. ARNOLD.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 64.
Judgment.

REGULAR No. 118 OF 1902.

M. ABDUL GUFFOOR

VERSUS

EMAM SAIB AND ONE.

BEFORE G. F. ARNOLD, ESQUIRE, JUDGE OF THE COURT.

Judgment.

10 All parties present.

Both defendants present admit the claim of Rs. 6,000. Emam Saib says that he agrees if the amount is not paid within the time allowed (six months) plaintiff may be declared the owner of the property (*vide* statement overleaf). Abdul Ryman similarly agrees. Under these circumstances I consider the decree for foreclosure, is one to be made by consent of the parties, although the mortgage is an usufructuary one.

There will be a mortgage decree on confession against both defendants for Rs. 6,000 and costs (Rupees six thousand). The decree will be in the form prayed for by consent of the parties.

20

G. F. ARNOLD,
District Judge.

(ON THE BACK.)

21st July 1902.

EMAN SAHIB.

I cannot pay this debt and agree that if the amount is not paid within 6 months the property mortgaged may be absolutely given over to plaintiff. - I am the owner of the property.

ABDUL RYMAN.

I also agree to the above.

30

G. F. ARNOLD,
District Judge.

21-10-07.

PRELIMINARY DECREE.

No. 65.
Decree.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST, AT MOULMEIN.**

SUIT No. 118 OF 1902.

M. ABDUL GUFFOOR, Trader of Moulmein PLAINTIFF.

AGAINST

1. EMAM SAIB, Broker
2. ABDUL RAHMAN, Trader } of Kado DEFENDANTS.

Claim for Rs. 6,000 due by defendants to plaintiff on a mortgage bond and for foreclosure of the right to redeem the property specified in the said bond annexed to the plaint. 10

This cause coming on on the 21st day of July 1902 for final disposal before G. F. Arnold, Esquire, District Judge of Amherst in the presence of plaintiff and of the defendants, it is ordered and decreed that on the defendants paying into Court within 6 months from this date the sum of Rs. 6,000 (Rupees six thousand) with interest thereon at the rate of 12 per cent. per annum from the date of institution of suit, *i.e.* from 8th July 1902, and the costs of this suit, the plaintiff do reconvey the mortgaged property free from all incumbrances done by him or any claiming under him and do deliver up to the Registrar of the Court all deeds and writings in his custody or power relating thereto, and that such reconveyance being made and deeds and writings being delivered the Registrar shall pay out to the plaintiff the sum paid into Court by the defendants as aforesaid; but in default of the defendants making such payment then it is ordered that the defendants do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the mortgaged premises above specified, and the plaintiff be declared the owner of the same and that the sum of Rs. 453-8 (Rupees four hundred and fifty-three and annas eight) be paid by defendants to plaintiff on account of the costs of this suit. 20

Given under my hand and the seal of the Court this 21st day of July 1902. 30

G. F. ARNOLD,

District Judge.

Signed on 24th July 1902.

Notice.

The parties in the abovementioned suit are hereby required to take back into their own keeping all Exhibits filed by them respectively, for the purpose of the said suit and now in the custody of the Court, as soon as the decree or order therein shall have become final.

COST OF SUIT.

Plaintiff.		Amount.	Defendant.		Amount.
		Rs. A. P.			Rs. A. P.
10	1. Stamp for plaint	315 0 0	1. Stamp for power ....	.....	
	2. Stamp for power	0 8 0	2. Stamp for petition ....	.....	
	3. Stamp for exhibits	1 0 0	3. Pleader's fee ....	.....	
	4. Pleader's fees on Rs. 6,000	135 0 0	4. Subsistence for wit- ness ....	.....	
	5. Service of process	2 0 0	5. Service of process ....	.....	
			6. Translation fee ....	.....	
			7. Commissioner's fee ....	.....	
	Total	453 8 0	Total ....	.....	

D. O'SULLIVAN,
Registrar.

E.
Record of
The District Court of Amherst.
Civil Regular No. 159 of 1902.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 66.
Plaint.

CIVIL REGULAR No. 159 OF 1902.

ABDUL RAHAMAN, Trader of Kado PLAINTIFF.

AGAINST

MAUNG THA HNYIN, Trader of 5th Division, Moul-
mein.... DEFENDANT.

The abovenamed plaintiff states as follows :—

10 1. That in Civil Regular No. 77 of 1901 this Honourable Court was
pleased to pass a mortgage decree in favour of the defendant Maung Tha
Hnyin.

2. The movable properties affected by the mortgage decree consist of
certain logs of timber and certain sale of jewels.

3. That the mortgage bond, dated 26th July 1890, and its assignment,
dated the 8th November 1894 referred to in the sale notice hereto annexed and
marked I do not form any portion of the mortgage property effected by the said
decree.

20 4. That the mortgage bond had been satisfied long ago and is no effect
at present.

5. Under the circumstances the order of the sale of mortgage bond and
its assignment is wrong and contrary to the terms of the mortgage decree.

Wherefore plaintiff prays for a decree de-
claring that the mortgage bond is not liable
to sale in pursuance of the said decree and
also for costs of suit.

A. GUFFOOR,

Plaintiff's Advocate.

ABDUL RAHAMAN

(in native character.)

30 I the plaintiff abovenamed do declare that what is stated above is true to
the best of my knowledge except as to matter stated on information and belief
and which I believe to be true.

ABDUL RAHAMAN

(in native character.)

Moulmein, 14th August 1902.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 67.
Written Defence.

CIVIL REGULAR NO. 159 OF 1902.

ABDUL RAHMAN PLAINTIFF.

VERSUS

MAUNG THA HNYIN DEFENDANT.

The written statement of the abovenamed defendant states as follows :—

1. That the plaint discloses no cause of action against defendant. The suit lies against the Receiver appointed by the Court in Suit No. 77 of 1901. 10

2. That the plaint is brought unnecessarily as the matter could have been decided by the petition to the Court against the action of the Receiver, who is also an Officer of the Court.

3. That the matter is *res judicata* the concluding portion of para. 27 of the judgment in Suit No. 77 of 1901 clearly indicating that the mortgage deed, dated 26th July 1890 and its assignment, dated 8th November 1894 are included in the property liable to be sold in satisfaction of the decree in that suit.

See also concluding portion of
para. 3 of judgment.

D. O'SULLIVAN.

Wherefore petitioner prays that the suit may be dismissed with costs. 20

MAUNG THA HNYIN

(in Burmese.)

I, the defendant abovenamed do hereby declare that what is stated above is true to my knowledge except as to matters stated on information and belief and which I believe to be true.

MAUNG THA HNYIN

(in Burmese.)

Moulmein, 21st August 1902.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

No. 68.
Issue.

REGULAR No. 159 OF 1902.

ABDUL RAHAMAN.

VERSUS

MAUNG THA HNYIN.

BEFORE G. F. ARNOLD, ESQUIRE,

JUDGE OF THE COURT.

ISSUE.

Whether the mortgage bond, dated 26th July 1890 and the assignment deed dated 8th November 1894 were included in the term title deeds in para. 27 of the judgment in Suit No. 77 of 1901, and were intended to be included in the decree?

G. F. ARNOLD,

District Judge.

22nd August 1902.

No. 69.
Judgment.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST.**

REGULAR No. 159 OF 1902.

ABDUL RAHAMAN.

VERSUS

MAUNG THA HNYIN.

JUDGMENT.

I have heard Mr. Guffoor on behalf of the plaintiff. I think there is no doubt from the language of the plaint and judgment in Suit No. 77 of 1901, that this bond and the immovable property it relates to, was intended to be included in the decree *vide* especially the conclusion of para. 3 of the judgment. The suit is dismissed with costs. 10

G. F. ARNOLD,

District Judge.

26th August 1902.

Simple Money Decree.

**IN THE COURT OF THE DISTRICT JUDGE,
AMHERST, AT MOULMEIN.**

No. 70.
Decree.

SUIT No. 159 OF 1902.

ABDUL RAHMAN, Trader of Kado PLAINTIFF.

AGAINST

MAUNG THA HNYIN, Trader of Moulmein DEFENDANT.

10 Claim for a declaration that the mortgage deed, dated 26th July 1890, is
not liable to sale in pursuance of the decree in Civil Regular No. 77 of 1901.

This cause coming on on the 26th day of August 1902 for final disposal
before G. F. Arnold, Esquire, District Judge of Amherst in the presence of
Mr. Abdul Guffoor, advocate on the part of the plaintiff and of the defendant,
it is ordered that the suit be dismissed.

Given under my hand and the seal of the Court this 26th day of August
1902.

G. F. ARNOLD,
District Judge.

Signed on 28th August 1902.

COST OF SUIT.

Plaintiff.	Amount.	Defendant.	Amount.
	Rs. A. P.		Rs. A. P.
Stamp for plaint	10 0 0		<i>Nil.</i>
Stamp for power	0 8 0		
Pleader's fees	10 0 0		
Service of process	2 0 0		
Total	22 8 0		

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NOTICE.

Parties concerned in the above suit are hereby requested to withdraw all the documents filed by them and that are now remaining in the Court as soon as the decree or final order is passed.

D. O'SULLIVAN,

Registrar.

Appendix II.

**List of Formal Documents excluded under Clause II of Her late Majesty's Order
in Council, dated the 13th June 1853, and by consent of Advocates.**

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FROM THE RECORD IN CIVIL REGULAR NO. 64 OF 1903.

1. Copy of judgment of the Chief Court of Lower Burma (Appellate Side) in Civil First Appeal No. 1 of 1906.
2. Copy of Decree of the Chief Court of Lower Burma (Appellate Side) in Civil First Appeal No. 1 of 1906.
3. Return of service of summons on all the defendants—with enclosure.
4. Postal receipt of letter addressed to H. B. M's. Vice-Consul at Chengmai
5. Return of service of summons on first defendant Maung Tun Hla with certificate of service by H. B. M's. Consul at Chengmai.
6. Return of service of summons on Ma Byu—with enclosure.
7. Return of service of notice on Maung U Baw, son of respondent Maung Tha Hnyin, on behalf of his father—with enclosure.
8. Return (17th August 1903) of summons on ninth and tenth defendants not duly served because they could not be found, and a copy of the summons had to be fixed to the outer door of their house.
9. Return of service of summons on Ma Byu—guardian of the minor defendants 6th, 7th and 8th—with enclosure.
10. Return (28th August 1903) of summons on 9th defendant, Abdul Guffur, not duly served as he could not be found—with enclosures.
11. Return (7th September 1903) of summons on 9th defendant Abdul Guffur, not duly served as he could not be found—with enclosures.
12. Return of service of notice on 1st defendant Maung Tun Hla with endorsement of service by the Registrar of H. B. M's. District Court at Chengmai.
13. Notice to Abdul Guffur—Advocate for 1st, 2nd and 3rd defendants—4th defendant Maung Po Mya, 5th defendant Ma Hla Tha, Ma Bu—guardian *ad litem* to 6th, 7th and 8th defendants—and Mr. Barretto—Advocate for 9th defendant—to file cross-interrogatories for the examination on commission of S. N. N. Arnachellam Chetty with process-server's certificate of service on Arban, Clerk, for A. Guffur, Maung Po Mya, and Viratha Rajalu Naidu, Clerk, for Mr. Barretto, and report of non-service on Ma Hla Tha, and Ma Bu, who could not be found,

14. Commission to the District Judge of Madura for the examination of S. N. A. Arnachellum Chetty—witness for plaintiff.
15. Return of service of summons from Chengmai on 1st defendant Maung Tun Hla—with enclosures.
16. Notice to the parties that hearing of the suit has been adjourned to 7th September 1904 with process-server's affidavit of service.
17. Return of summons unserved on Arnachellum Chetty to appear and give evidence on commission before the District Court, Madura—with enclosures.
18. Summons to Maung Tha E, Ma Mi Kavin, Ma Mun Taw and Abdul Rahman—for 7th September 1904—with process-server's affidavit of service. 10
19. Order transmitting to the District Judge of Thaton a subpœna for service on Arnachellum Chetty.
20. Return of service of summonses on Abdul Rahman, Emam Saib, and Mahomed Adam with report of non-service on Maung Ne and Maung Shwe E (with the non-served summonses annexed) and process-server's affidavit.
21. Return of summonses unserved on U Ke and U Yaik with process-server's affidavit and the non-served summonses annexed. 20
22. Proceedings of the District Judge of Thaton returning summons duly served on Arnachellum Chetty—with enclosures.
23. Return of service of summons on all defendants—with enclosure.
24. Postal receipt for a registered letter addressed to the District Judge, Madura.
25. Commission (dated 12th October 1904) issued to the District Judge of Madura for examination of plaintiff's witness Arnachellum Chetty—with enclosure.
26. Plaintiff's application for issue of subpœnas to witnesses Maung Tha E, Ma Mi Kavin, Ma Mun Taw and Abdul Rahman—with order to issue. 30
27. Plaintiff's application for issue of subpœnas to witness Arnachellum Chetty—with order to issue.
28. Ninth defendant's application for issue of subpœnas to witnesses Maung Shwe E, Maung Ne, Maung Tha E, Abdul Rahman, Emam Saib and Mahomed Adam—with order to issue.
29. Ninth defendant's application for issue of subpœnas to witnesses Ko Byaw and Maung Ne—with order to issue.

30. Defendant's application for issue of subpoenas to witnesses U Yaik and U Ke—with order to issue.
31. Burmese petition of defendant Maung Tun Hla forwarded through H. B. M's. Consul pointing out that he cannot get to Moulmein from Siam within the time specified in the summons and praying that six months further time may be granted him.
32. Letter No. 333-17, dated 13th May 1903 from the District Judge, Amherst to H. B. M's. Vice-Consul at Chengmai forwarding summons for service on 1st defendant Maung Tun Hla.
- 10 33. Letter No. 42, dated 22nd June 1903 from H. B. M's. Consul at Chengmai to the District Judge of Amherst, returning duplicate summons with endorsement of service.
34. Letter No. 548-17, dated 29th July 1903 from the District Judge, Amherst to H. B. M's. Vice-Consul at Chengmai forwarding notice for service on 1st defendant Maung Tun Hla.
35. Letter dated 21st August 1903 from H. B. M's. Consul, Chengmai, to the District Judge of Amherst, returning duplicate copy of notice with endorsement of service.
- 20 36. Postal Coupon of amount unspent on the commission returned by the Sub-Court, Madura East.
37. Letter No. 570, dated 12th September 1904 from the Subordinate Judge, Madura East, to the District Judge, Amherst, returning warrant of commission for examination of Arnachellum Chetty unexecuted—as he cannot be found.
38. Letter dated 9th January 1905 from the Subordinate Judge, Madura East to the District Judge, Amherst, returning commission for examination of Arnachellum Chetty as he is not living there.
39. Power-of-Attorney granted by 1st defendant Maung Tun Hla to his pleader Abdul Guffur.
- 30 40. Power-of-Attorney granted by Abdul Rahman to his pleader C. L. Barretto.
41. Power-of-Attorney granted by M. Abdul Guffur 9th defendant to his pleader C. L. Barretto.
42. Power-of-Attorney granted by Ma Satha Pu and her minor children to their pleader C. L. Barretto.
43. Power-of-Attorney granted by Ma Lut Taw and Ma U to their pleader A. Guffur.
44. Petition dated 14th September 1903 of M. Abdul Guffur praying that he may be furnished with a copy of the plaint—with order to furnish.

45. Petition of Chit Hlaing, advocate for the plaintiff for issue of commission to the District Court of Madura for examination of S. N. N. Arnachellum Chetty with interrogatories with reference to the mortgaged bond.
46. Return of commission for examination of Arnachellum Chetty from the District Court of Madura—with enclosures.
47. Written argument of plaintiff's advocate.
48. Written argument of 9th, 10th and 11th defendant's advocate.
49. Written argument of 1st, 2nd and 3rd defendant's advocate.

FROM THE RECORD IN CIVIL FIRST APPEAL NO. 1 OF 1906.

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1. Copy of judgment and decree of the District Court of Amherst in Civil Regular No. 64 of 1903.
2. Petition of the respondent (Maung Tha Hnyin) praying that the appellant's may be called upon to furnish security—with affidavit.
3. Petition of Ma Satha Pu praying that the application to furnish security may be dismissed—with affidavit.
4. Court's order dismissing the application to call upon Ma Satha Pu to furnish security.
5. Formal order as in (4.)
6. Court's order calling for records from the District Court, Amherst. 20
7. Order of the District Court of Amherst, submitting the records called for.
8. Notice for payment of copying fees.
9. Memorandum from Messrs. Cowasjee and Cowasjee depositing Rs. 3 in Court-fee stamps for service of notice on respondent Maung Tha Hnyin with Court's order of acceptance.
10. Letter from the Assistant Registrar, Appellate Side, Chief Court of Lower Burma, to the Judge of the Court of Small Causes, Moulmein, transmitting a notice in duplicate for service on Maung Tha Hnyin.
11. Return of service of process on Maung Tha Hnyin.
12. Letter from the Assistant Registrar, Appellate Side, to the Judge of the District Court of Amherst, transmitting notices for service on Ma Satha Pu and two others. 30
13. Return of service of process on Ma Satha Pu and two others.

FROM THE RECORD OF CIVIL MISCELLANEOUS APPLICATION NO. 40 OF 1907.

1. Maung Tha Hnyin's application with affidavit for stay of execution of the decree in Civil 1st Appeal No. 1 of 1906 of the Chief Court.
2. Order of the Court calling for the records.
3. Order of the District Court, Amherst, submitting the records called for in No. 2.
4. Petition of Chit Hlaing Counsel for Maung Tha Hnyin tendering Rs. 11 in Court-fee stamps for service of notice on respondents.
5. Letter from the Assistant Registrar, Appellate Side to H. B. M Consul at Chengmai, Siam, forwarding notice in duplicate for service on Maung Tun Hla.
6. Letter from the Assistant Registrar, Appellate Side to the District Judge, Amherst, forwarding notices in duplicate for service on 2nd to 11th respondent.
7. Return of notices on 9th, 10th and 11th respondent's not duly served for want of identifier's affidavit (with enclosures) on application for leave to appeal to His Majesty in Council.
8. Return of notices on 2nd to 8th respondents not duly served for want of identifiers affidavit (with enclosures) on application for leave to appeal to His Majesty in Council.
9. Deposit of Rs. 3 in stamp by Mr. Agabeg, Counsel for Maung Tha Hnyin for issue of fresh notice on 9th, 10th and 11th respondents.
10. Letter from Assistant Registrar, Appellate Side to the Judge, Small Cause Court, Moulmein, forwarding notices in duplicate for service on 9th, 10th and 11th respondents.
11. Deposit of Rs. 4-8-0 by Mr. Agabeg, Counsel for Maung Tha Hnyin for issue of fresh notice on 2nd to 8th respondents.
12. Letter from Assistant Registrar, Appellate Side to the District Judge, Amherst, forwarding notices in duplicate for service on 2nd to 8th respondents.
13. Return of notice on 9th, 10th and 11th respondents not duly served for want of identifier's affidavit (with enclosures) on application for stay of execution of decree.
14. Return of notice on application for leave to appeal to His Majesty in Council (with enclosures) duly served on 2nd to 8th respondent.
15. Deposit of Rs. 3 by Mr. Agabeg, Counsel for Maung Tha Hnyin for issue of fresh notice on 9th, 10th and 11th respondents.

16. Letter from the Assistant Registrar, Appellate Side forwarding fresh notices in duplicate for service on 9th, 10th and 11th respondents.
 17. Return of notice from Chengmai with an endorsement stating 1st respondent Maung Tun Hla is dead.
 18. Court's information to Chit Hlaing of the death of Maung Tun Hla and to take steps to bring on the legal representation.
 19. Return of notice with enclosures on 9th, 10th and 11th respondents on application for stay of execution of decree duly served.
 20. Order of the Assistant Registrar, Appellate Side to bailiff authorizing him to receive from the Counsel of Maung Tha Hnyin the sum of Rs. 1,000 for expenses.
 21. Duplicate receipt of the bailiff of the amount vide 20.
 22. Order of the Assistant Registrar, Appellate Side to bailiff authorizing him to receive from the Counsel of Maung Tha Hnyin the sum of Rs. 4,000 as security for respondent's costs.
 23. Duplicate receipt of the bailiff of the amount vide 22.
 24. Order calling for Civil Regular No. 77 of 1901, and No. 118 of 1902 of the District Court, Amherst.
 25. Order of the District Court, Amherst, submitting records called for in 24.
 26. Notice to Messrs. Cowasjee and Cowasjee Counsel for 9th, 10th and 11th respondents informing them that the appeal to the Privy Council had been declared admitted.
 27. Letter from the Assistant Registrar, Appellate Side to the District Judge, Amherst, forwarding notices in duplicate for service on 1st to 8th respondents informing them that the appeal to the Privy Council had been declared admitted.
 28. Return of notices duly served (with enclosures in 27) on 1st to 8th respondents.
 29. Letter from District Judge, Amherst, requesting the return the records of his Court.
 30. Office note and draft letter to District Judge, Amherst, returning the records asked for in 29.
 31. Letter from District Judge, Amherst, re-submitting the records returned in 30.
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